C-8353 SUPREME COURT OF TEXAS CASES 016
EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL. V. KIRBY, 1988-89
WILLIAM, ET AL. (3RD DISTRICT)

This Court and other courts of this state have consistently enforced that constitutional mandate. Morrow v. Corbin, 122 Tex. 553, 62 S.W.2d 641 (1933); Brazos River Authority v. City of Graham, 163 Tex. 167, 354 S.W.2d 99 (1962); Board of Insurance Commissioners v. Guardian Life Insurance Company, 142 Tex. 630, 180 S.W.2d 906 (1944); Ex parte Giles, 502 S.W.2d 774 (Tex. Crim. App. 1973). Any attempt by one department of government to interfere with the powers of another is null and void.

The provision is controlling even when two constitutional provisions are involved. The situation here before the Court is basically similar to that presented by Ex parte Hughes, 133 Tex. 505, 129 S.W.2d 270 (1939). At the time pertinent to that decision, Article XVI, Section 11 conferred on the Legislature the duty to regulate usury. The contention there was that the statutes which had been enacted by the Legislature were inadequate to prevent usury. This Court refused to interfere, holding instead that (129 S.W.2d 276):

> "A sufficient answer to such contention is to say that where the Constitution, as in this instance, places a duty on the Legislature, and the Legislature by appropriate laws purports to carry out such constitutional mandate, the Legislature is the sole judge of what is adequate. In such instances it does not lie within the power of the judicial branch of the government to control the legislative will." (Emphasis added.)

The Foundation School Program was similarly passed by the Legislature. Unless this Court were to elect to overrule its previous decision, it must hold, as it did in the reported case, that the Legislature is the sole judge of what constitutes an "efficient system of free public schools." Moreover, this Court would have to disregard

Article II, Section 1 to reach a conclusion that the judicial branch can control legislative will.

The fixing of school policies has been delegated to the Legislature and to the Legislature alone. Spring Branch Independent School District v. Stamos, 695 S.W.2d 556 (Tex. 1985); Lewis v. Independent School District, 139 Tex. 83, 161 S.W.2d 450 (1942). The wisdom or expedience of the law is the Legislature's prerogative - not that of the courts. Texas National Guard Armory Board v. McCraw, 132 Tex. 613, 126 S.W.2d 627 (1939); Smith v. Davis, 426 S.W.2d 827 (Tex. 1968).

WEALTH AS A SUSPECT CLASSIFICATION

The second premise requisite to acceptance of the trial court's judgment and Petitioners' position here is that wealth is a suspect classification for the purposes of equal rights or equal protection analysis. The United States Supreme Court rejected that contention in the Rodriguez case, and the Austin Court of Appeals adopted that holding. The disparity in wealth found by the trial court was between school districts rather than between individuals. Moreover, it is clear from Petitioners' contentions in this Court that what they seek is equality in the financing of school districts. They recognize that school districts are creatures of the state or subdivisions of state government, Lee v. Leonard I.S.D., 24 S.W.2d 449 (Tex. Civ. App. - Texarkana 1930, writ ref'd), but they, without explanation, seem to assume that school districts are entitled to equal rights. That contention is contrary to rulings made in numerous reported decisions. The right of equal protection of the laws and due process of law are rights vested only in persons - not in

political subdivisions. Colony Mutual Utility District v. Appraisal District of Denton County, 626 S.W.2d 930 (Tex. App. - Fort Worth 1982, writ ref'd n.r.e.). An agency created by the state has no privileges, immunities or rights under the State or Federal Constitution which it may invoke in opposition to the will of its creator. McGregor v. Clawson, 506 S.W.2d 922 (Tex. Civ. App. - Waco 1974, no writ history). Equal protection relates to equality of persons as such, rather than between areas, and territorial uniformity is not a constitutional prerequisite. Carl v. South San Antonio Independent School District, 561 S.W.2d 560 (Tex. Civ. App. - Waco 1978, writ ref'd n.r.e.). There is no denial of equal protection of the law in either the geographic scope of the district or in its operation. Beckendorf v. Harris-Galveston Coastal Subsistence District, 563 S.W.2d 239 (Tex. 1978).

The few cases in which wealth has been considered in connection with equal rights or equal protection are entirely different from the case at bar. The trial court appeared to find authority in Shapiro v. Thompson, 394 U.S. 618 (1969), but that case does not at all involve a discrimination or classification on the basis of wealth such as that which was perceived by the trial court here. The statutory classification which was before the United States Supreme Court was that created by a one-year residence requirement for entitlement to welfare benefits. The classification found was in time of residence. The court explained that (394 U.S. 627):

> "There is no dispute that the effect of the waiting period requirement in each case is to create two classes of needy resident families indistinguishable from each other except that one is composed of residents who have resided a year or more, and the second of residents who have resided less than

> a year in the jurisdiction. On the basis of this sole difference the first class is granted and the second class is denied welfare-aid upon which may depend the ability of the families to obtain the very means to subsist - food, shelter, and other necessities of life."

The court found that there was a constitutional fundamental right to travel from one state to another and that the one-year waiting period for state benefits absolutely deprived the poor of the right to travel. Because the state's statutory classification denied to one group the fundamental right to travel, the strict scrutiny test was applied. The classification was not between rich and poor but was instead between poor who were identical in all respects except that one group met, and the other could not meet, the one-year residence requirement for welfare. The classification was invalidated because the fundamental right to travel was involved and because the classification was not supported by any compelling government interest.

In Griffin v. Illinois, 351 U.S. 12 (1956), and other cases following that decision, the court invalidated state laws that prevented an indigent criminal defendant from acquiring a transcript for use at various stages of the trial and appeal process. The payment requirements in each situation were found to create a discrimination against those who, because of their indigency, were totally unable to pay for transcripts. In each case, however, the court emphasized that no constitutional violation would have been shown if the state had provided an adequate substitute for a full stenographic transcript.

In Douglas v. California, 372 U.S. 353 (1963), the court established an indigent defendant's right to court-appointed counsel on direct appeal.

The holding, however, was limited to defendants who could not pay for counsel from their own resources and had no other means of gaining representation. The decision provides no basis for relief for those on whom the burdens of paying for a criminal defense would be great but not insurmountable. Neither does it deal with the relative differences in the quality of counsel that might be acquired by the indigent as contrasted with the wealthy.

In Williams v. Illinois, 399 U.S. 235 (1970), and Tate v. Short, 401 U.S. 395 (1971), the court struck down criminal penalties that subjected indigents to incarceration simply because of their inability to pay fines. Neither case touched upon the question of whether equal protection would be denied to persons with relatively less money for the payment of fines.

The Texas filing fee requirement for primary elections was invalidated in Bullock v. Carter, 405 U.S. 134 (1972), because the size of the fee barred all potential candidates who were unable to pay the fee and because the system provided no reasonable alternative means of access to the ballot.

In other words, a state classification upon the basis of "rich" - "poor" has been invalidated only in those instances where the poor were totally unable to qualify.

Texas state courts have handled the rich-poor issue in much the same manner. In Montes v. Lazzara Shipyard, 657 S.W.2d 886 (Tex. App. - Corpus Christi 1983, no writ history), the appellant secured a statement of facts in narrative form provided for a pauper in conformity with Rule 380, Texas Rules of Civil Procedure. One of the contentions on appeal

was that the narrative statement of facts did not permit demonstration of certain errors in the trial proceedings. In rejecting the argument that providing paupers with a narrative statement of facts when persons with money could secure a statement of facts in question and answer form constituted a denial of equal rights, the court first explained that (657 S.W.2d 887):

> "The appellant argues that the provision of Rule 380 which requires that the free statement of facts prepared for paupers be in a narrative form unconstitutionally discriminates against poor persons. He refers us to Boddie v. Connecticut, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971), which held that indigents seeking divorces must be given access to the courts. In deciding that it would be a denial of due process to restrict divorce proceedings to those who could afford to pay, the Supreme Court expressly limited its holding to the case before it."

After discussing a later decision which had distinguished the cited case, the court further explained that (657 S.W.2d 888):

> "The Court emphasized that Boddie was exceptional because it involved the fundamental right of marriage and that there was no means of resolving the problem without access to the courts." (Emphasis added.)

The court, therefore, concluded that there was no denial of equal rights because indigents were not totally deprived of the right to appeal. It should not be open to dispute in any appellate court that a question and answer statement of facts is superior to a narrative statement of facts on any appeal involving fact issues, but the court held that equal protection was not violated by providing a statement of facts in narrative form.

In Stuart v. Tarrant County Child Welfare Unit, 677 S.W.2d 273 (Tex. App. - Fort Worth 1984, no writ history), appeal had been taken

from a judgment terminating a parent-child relationship. With regard to the parents' argument the court first pointed out that (677 S.W.2d 280):

> "They claim that sec. 15.02(1)(J)(i) discriminates on the basis of poverty because it allows the termination of parental rights of persons who are too poor to enroll their children in school. By creating different classes of persons based on wealth, the Stuarts argue, the provision denies them equal protection of the law in violation of the Texas and U.S. Constitutions. TEX. CONST. art. I, sec. 3; U.S. CONSTI. AMEND. XIV. We cannot agree, however, either with this constitutional argument or the sufficiency of the evidence claim."

After citing a United States Supreme Court decision on equal protection, the court continued (677 S.W.2d 280):

> "In order to attack a law on equal protection grounds, therefore, a challenger must demonstrate that the law classifies persons in some manner.
>
> "In the instant case, the Stuarts appear to be claiming that sec. 15.02(1)(J)(i) creates two classes of persons: (1) those with sufficient funds to enroll their children in school; and (2) those who are not wealthy enough to do so. We fail, however, to see such a classification. The requirement that a child be enrolled in school cannot classify persons on the basis of poverty because the public school system in Texas is provided to children without charge."

Even where persons are classified, therefore, under the decisions both of the United States Supreme Court and the courts of this state, only a total deprivation of benefits can result in invalidity. It has not been and could not be contended that poor students are totally deprived of public education. Moreover, it was not even contended that poorer citizens are excluded from the property-wealthy school districts. School district boundaries do not constitute lines of demarcation between wealthy citizens and poor citizens. Wealthy families live in property-poor school districts, and poor families live in property-wealthy school districts, but

the primary focus of the trial court's holdings was on the dollar mark. It was simply assumed - but not proved - that spending money, per se, provides better education.

CONSEQUENCES OF ACCEPTANCE OF PETITIONERS' POSITION

No one has contended or held that the present system of financing public education is desirable or should be continued. Clearly it is not ideal. Questions asked from the bench during oral argument indicated that this Court is concerned about what it can do or what it should do to improve the situation. Other questions indicated that at least some members of the Court are concerned with restraints imposed by constitutional provisions which the Petitioners have, in effect, disregarded.

Petitioners assume that this Court can set guidelines for legislative action. This amicus curiae does not agree, but even if this Court can direct legislative action, it clearly cannot order the people of Texas to repeal or amend constitutional provisions, and it is herein submitted that the position of Petitioners would logically have that effect.

Equality of funding for school districts is unquestionably the primary requirement which Petitioners would impose on the Legislature. As the trial court findings indicate, the disparities are largely the result of the varying amounts of local tax revenues utilized in the support of the public schools. Those tax revenues have been collected in conformity with measures specifically authorized by Article VII, Section 3, wherein it is specified that:

> ". . . the Legislature may authorize an additional ad valorem tax to be levied and collected within all school districts heretofore formed or hereafter formed, for the further maintenance of public free schools, and for the erection and

> equipment of school buildings therein; provided that a majority of the qualified property taxpaying voters of the district voting at an election to be held for that purpose, shall vote such tax not to exceed in any one year one ($1.00) dollar on the one hundred dollars valuation of the property subject to taxation in such district, but the upon the amount of school district tax herein authorized shall not apply to incorporated cities or towns constituting separate and independent school districts, nor to independent or common school districts created by general or special law."

The clear import of that provision is that the funds derived from the locally collected taxes are to be used in the districts wherein those taxes were collected. It is also significant to note that taxes collected by the "rich" school districts could not be statutorily taken from them for distribution to the "poor" districts, because to do so would be to convert the authorized ad valorem taxes of school districts into a state ad valorem tax in violation of Article VIII, Section 1-e which specifies that:

> "Sec.1-e. No State ad valorem taxes shall be levied upon any property within this State.
>
> "2. All receipts from previously authorized State ad valorem taxes that are collected on or after the effective date of the 1982 amendment to this section shall be deposited to the credit of the general fund of the county collecting the taxes and may be expended for county purposes. Receipts from taxes collected before that date shall be distributed by the legislature among institutions eligible to receive distributions under prior law. Those receipts and receipts distributed under prior law may be expended for the purposes provided under prior law or for repair and renovation of existing permanent improvements."

The available school fund could not be utilized to make up for the differences in funding. To attempt to do so would be to violate Article VII, Section 5 which creates and directs the appropriation of the available school fund. The provision, in its entirety, reads:

"Sec. 5. (a) The principal of all bonds and other funds, and the principal arising from the sale of the lands hereinbefore set apart to said school fund, shall be the permanent school fund, and all the interest derivable therefrom and the taxes herein authorized and levied shall be the available school fund. The available school fund shall be applied annually to the support of the public free schools. Except as provided by this section, no law shall ever be enacted appropriating any part of the permanent or available school fund to any other purpose whatever; nor shall the same, or any part thereof ever be appropriated to or used for the support of any sectarian school; and the available school fund herein provided shall be distributed to the several counties according to their scholastic population and applied in such manner as may be provided by law."

"(b) The legislature by law may provide for using the permanent school fund and the income from the permanent school fund to guarantee bonds issued by school districts.

"(c) The legislature may appropriate part of the available school fund for administration of the permanent school fund or of a bond guarantee program established under this section." (Emphasis added.)

Apportionment of the available school fund on the basis of scholastic population is in effect a guarantee, rather than a refutation, of equal protection. Only the manner in which such funds are to be applied was left subject to legislative control. That proposition is made abundantly clear by subsections (b) and (c) wherein the Legislature was granted authority to utilize the available school fund for two other specific purposes.

The Constitution does not prohibit the Legislature from changing the size of school districts. The Legislature, therefore, might increase the size of the "poor" school districts to provide them with the same taxing potential as the "rich" districts or reduce the size of the "rich" districts (cut them into segments) so that no district would have a greater taxing potential than the "poor" districts. These alternatives

would be extremely unpopular with the voters of the state. Even more significant, however, is the fact that either type of legislative control of the size or the wealth in school districts would result in financial chaos as the result of the application of Article VII, Section 3-b wherein it is provided that:

> "Sec. 3-b. No tax for the maintenance of public free schools voted in any independent school district and no tax for the maintenance of a junior college voted by a junior college district, nor any bonds voted in any such district, but unissued, shall be abrogated, cancelled or invalidated by change of any kind in the boundaries thereof. After any change in boundaries, the governing body of any such district, without the necessity of an additional election, shall have the power to assess, levy and collect ad valorem taxes on all taxable property within the boundaries of the district as changed, for the purposes of the maintenance of public free schools or the maintenance of a junior college, as the case may be, and the payment of principal of and interest on all bonded indebtedness outstanding against, or attributable, adjusted or allocated to, such district or any territory therein, in the amount, at the rate, or not to exceed the rate, and in the manner authorized in the district prior to the change in its boundaries, and further in accordance with the laws under which all such bonds, respectively, were voted; and such governing body also shall have the power, without the necessity of an additional election, to sell and deliver any unissued bonds voted in the district prior to any such change in boundaries, and to assess, levy and collect ad valorem taxes on all taxable property in the district as changed, for the payment of principal of and interest on such bonds in the manner permitted by the laws under which such bonds were voted. In those instances where the boundaries of any such independent school district are changed by the annexation or consolidation with, one or more school districts, the taxes to be levied for the purposes hereinabove authorized may be in the amount or at not to exceed the rate theretofore voted in the district having at the time of such change the greatest scholastic population according to the latest scholastic census and only the unissued bonds of such district voted prior to such change, may be subsequently sold and delivered and any voted, but unissued, bonds of other school districts involved in such annexation or consolidation shall not thereafter be issued."

In other words, if districts were combined, the constitutional provision rather than the electorate would fix the maximum tax rate at that of the district with the greatest scholastic population. Petitioners have disregarded that provision, but this Court cannot do so. How would the bonds of the smaller populated district be paid? Do the taxpayers of any district expect to meet the bond obligations incurred by another district?

To bring the Foundation School Program into conformity with Petitioners' concept of constitutionality by any of the procedures discussed above would require constitutional amendment, but a judicial requirement that the Constitution be amended would clearly violate the republican form of government declaration in Article I, Section 2.

Remaining alternatives would include increasing the sales tax or enacting a state income tax for the express purpose of augmenting the funds available to "poor" school districts. Even those actions, or any other tax levy for that specific purpose, would be subject to attack under the general prohibition in Article III, Section 51, declaring that:

> "The Legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individual, association of individuals, municipal or other corporations whatsoever;"

Numerous exceptions to that general rule have been created by other constitutional amendments, but none authorizes the grant of money in terms broad enough to include the disproportionate distribution of funds to "poor" school districts.

Clearly, the Legislature has not been unaware of public school problems. The Education Code has been amended at every regular

session since its adoption (Acts 1969, 61st Leg., Ch. 889). Article I, Section 2 of the Constitution is a pledge to the republican form of government. As explained in Bonner v. Belstering, 104 Tex. 432, 138 S.W. 571 (1911), the term is based on the concept of popular election and control. Whether that provision guarantees it or not, it is beyond dispute that the people of Texas have traditionally wanted local control of school districts.

The Legislature, under Article VII, Section 1, has the exclusive power to determine what constitutes "an efficient system of public free schools." That body faces a multitude of problems. Certainly the citizens of this state are entitled to have their own elected representatives initiate and determine the efficiency of the laws to which they should be subjected. The Legislature should not be condemned for failing to achieve an arbitrary ideal of equality when doing so - even if possible - would result in problems even more insurmountable than that which was the myopic focus of the trial court judgment here.

CONCLUSION

The allegiance of the Texas Legislature properly belongs to the citizens of the entire state, not to district courts whose judges serve only a single county. It is a matter of record that following a decision of this trial court in Guadalupe Delgado, et al. v. State of Texas, et al., the Legislature was in effect compelled to amend the worker's compensation law (Acts 1984, 68th Leg., 2nd C.S., Ch. 33, p. 562) because of the threat of an injunction which would become effective unless the statute was remedied to meet the trial court's requirements for and theories of

constitutionality. A similar situation compelling the Legislature to amend the unemployment compensation law (Acts 1985, 69th Leg., Ch. 67) resulted from the decision of this trial court in Roberto Camarena, et al. vs. Texas Employment Commission, et al. Neither trial court decision was approved by this or any other appellate court.

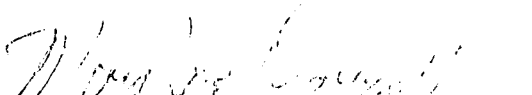
In the case at bar the trial court has deliberately and specifically given the Legislature time to respond - showing the trial court's recognition that this case involves the gravest possible issues of public policy and state finance and that the decision may potentially be one of the most disruptive ever handed down by a Texas court. The practice of compelling legislation by judicial injunction, however, violates the Texas Constitution - and it should be stopped. The case at bar presents a superb opportunity to do so.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Amicus Curiae prays that the judgment of the Court of Appeals be in all things affirmed.

Respectfully submitted,

CLARK, THOMAS, WINTERS
& NEWTON

By: 

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ATTORNEYS FOR AMICUS CURIAE
TEXAS FARM BUREAU

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Amicus Curiae Brief in Support of Respondents has been served on all attorneys of record on this the 20th day of July, 1989.

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HISPANIC NATIONAL BAR ASSOCIATION

C 8353

RECEIVED
IN SUPREME COURT
OF TEXAS

JUN 30 1989

JOHN T. ADAMS, Clerk

By _____ Deputy

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June 27, 1989

Ms. Mary Wakefield
Clerk of the Court
Texas Supreme Court
14th and Colorado,
Room AG-11
Austin, Texas 78701

Dear Ms. Wakefield:

Enclosed please find an original and twelve copies of the Brief of Amicus Curiae Hispanic National Bar Association in Support of Petitioners and Petitioner-Intervenors. All Counsel of Record will be provided with a true and correct copy of same.

Thank you for your kind and courteous attention.

Sincerely yours,

Gilbert Paul Carrasco
Chair, Legal and
and Legislative Issues
Committee

xc: All counsel of record

NO. C-8353

IN THE
SUPREME COURT OF TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, et al.,

Petitioners.

v.

WILLIAM N. KIRBY, et al.,

Respondents.

AMICUS CURIAE BRIEF OF THE HISPANIC NATIONAL BAR ASSOCIATION IN SUPPORT OF PETITIONERS AND PETITIONER - INTERVENORS

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June 1989

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Respondents

BRIEF AMICUS CURIAE OF THE HISPANIC NATIONAL BAR ASSOCIATION

IN SUPPORT OF
PETITIONERS AND PETITIONER-INTERVENORS

TO THE SUPREME COURT OF TEXAS:

Amicus curiae, the Hispanic National Bar Association submits this brief in support of the application of petitioners and petitioner-intervenors.

The amicus respectfully urges reversal of the judgment of the Court of Appeals and reinstatement of the judgment of the District Court, modified to award attorney's fees to petitioners and petitioner-intervenors.

INTEREST OF THE AMICUS

The Hispanic National Bar Association is a non-profit organization founded in 1972 to promote social, economic, and educational equity for all people. It is comprised of affiliated local associations and individuals, both Hispanic and non-Hispanic.

The Hispanic National Bar Association is concerned about a system of school financing, such as the one now in place in Texas, which relies heavily on local property taxes since such a system leads to great disparities among districts in the provision of educational opportunities. Students in property - poor districts thus receive inadequate and inferior educational opportunities as compared to those offered to those students in the more affluent districts. Furthermore, such a system has a discriminatory impact on minorities, particularly the Hispanic community, since these are the groups which tend to be concentrated in property - poor districts. The Texas school finance system thus contravenes the Hispanic National Bar Association's goal of providing equal educational opportunities for all people and is clearly violative of the Texas Constitution.

PRELIMINARY STATEMENT

Unlike the federal Constitution, the Texas Constitution not only specifically addresses itself to education but also states unequivocally that a general diffusion of knowledge is essential to the preservation of the liberties and rights of the people. The Texas Constitution clearly establishes an express nexus between education and the enjoyment and exercise of other fundamental rights in the Texas Constitution. Petitioners contend that, given the prominence of education in the Texas Constitution and the necessity of an adequate and substantially equal education to the exercise of other rights enumerated in the Texas Constitution, this Court should apply strict scrutiny analysis to the present school funding system.

The present system provides greater educational opportunities to those who happen to be born in property - rich districts but substantially denies the same means and opportunities to those in less affluent districts. Such a system surely cannot withstand judicial scrutiny and must be re-designed so as to ensure that every district has approximately equal abilities to raise and spend revenue on a per pupil basis for the support and maintenance of an efficient system of free public schools. The present system is neither suitable nor efficient and the legislature has thus violated its constitutional mandate.

Furthermore, in light of the district units finding that 84% of the population in the poorest districts are Mexican - American, it cannot be denied that the present school financing system

infringes upon the rights of poor Mexican - Americans to a greater extent than upon the rights of any other groups by significantly curtailing their ability to achieve substantially equal educational opportunities for their children. (TR. 563).

ARGUMENT

I THE COURT OF APPEALS IMPROPERLY CONCLUDED THAT THE TEXAS EDUCATION FINANCING SYSTEM IS NOT SUBJECT TO STRICT SCRUTINY ANALYSIS UNDER THE EQUAL PROTECTION CLAUSE OF THE TEXAS CONSTITUTION

A. General Standards of Review

The Petitioners and the Respondents in this case disagree as to the appropriate standard of review to be applied in determining whether public education is a fundamental right under the Texas Constitution. Petitioners argue, on the strength of the Trial Court's holding, that a reading of the language and structure of the Texas Constitution in light of the Supreme Court's rulings in San Antonio Ind. School Dist. v. Rodriguez, 411 U.S. 1 (1973), and Plyler v. Doe, 457 U.S. 202 (1982), leads persuasively and indisputably to the conclusion that education is a fundamental right guaranteed by the Texas Constitution. See Application of Petitioners Edgewood Independent School Dist., et al., for Writ of Error ("Edgewood Brief") at 26-36. Petitioners also rely upon an earlier Texas Court of Appeals decision in Stout v. Grand Prairie Ind. School Dist., 733 S.W.2d 290, 294 (Tex. App. - Dallas 1987), writ ref'd n.r.e.), cert. denied, U.S. 108 S.Ct. 1082 (1988), which expressly recognized that "public education is a fundamental right guaranteed by the Texas Constitution." See Edgewood Brief at 28.

Conversely, Respondents rely upon the decision of the Third District Court of Appeals, and the cases cited therein, in reaching the conclusion that the "explicit/implicit" test outlined

in Rodriguez and Plyler should be rejected. 1 Respondents urge that a more restrained reading of the Texas Constitution is mandated by the Texas Supreme Court's holding in Spring Branch Ind. School Dist. v. Stamos, 695 S.W.2d 556 (Tex. 1985), appeal dismissed, 475 U.S. 1001 (1986). See brief of Andrews Independent School Dist., et al.'s, in Response to Application for Writ of Error ("Andrews Brief") at 10, 20-21; Brief of Respondents Eanes Independent School Dist., et al., In Response to Petitioners's and Petitioner-Intervenors' Application for Writ of Error ("Eanes Brief") at 10-11.

1

In its opinion, the Third District Court of Appeals chides the Petitioners for urging that federal precedent be disregarded in resolving this appeal. See Kirby v. Edgewood Ind. School Dist., et al., No. 3-87-190-CV (1988) at 3, n.3. The court then goes on to recognize that "federal precedent is highly persuasive" in this matter. Id. The court seems to have missed the point of Petitioner's argument. Petitioner does not deny that under the Federal Constitution education is not a fundamental right. Petitioners, however, urge this court to read the Texas Constitution in light of the guidelines established in Rodriquez for constitutional interpretation. In fact, it is the Respondents and the Third district Court of Appeals which urge a self-serving use of federal precedent standing behind Rodriquez when it favors their position, and urging that state precedent control when a Rodriquez-like analysis would lead to a result inconsistent with their position.

In short, Respondents urge that fundamental rights analysis under the Texas Constitution does not have its genesis in the "explicit/implicit" text outlined in Rodriguez and Plyler, but instead, a narrower inquiry is to be made as to whether the alleged fundamental right has its "genesis in the express and implied protections of personal liberty recognized in federal and State constitutions." See Andrews Brief at 10, 20-21, Eanes Brief at 10-11 (quoting Spring Branch Independent School Dist. v. Stamos, 695 S.W.2d 556 (Tex. 1988), appeal dismissed, 475 U.S. 1001 (1986). Accordingly, Respondents contend that, because education is not included among those rights contained in the Texas Constitution's "Bill of Rights", it is not the type of personal liberty intended to be protected as a fundamental right. See Andrews Brief at 21; Eanes Brief at 19-22.

The deficiency of the Respondents' argument, however, becomes abundantly clear when one considers that the right to vote appears in Article VI of the Texas Constitution and not in the Article I "Bill of Rights". The right to vote in State elections has long been recognized as a fundamental right which is inextricably linked to free speech and otherwise preservative of all other rights. See generally, Dunn v. Blumstein, 405 U.S. 330 (1972); Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966). As such, it is undeniable that any inequality in the manner in which a State provides the right to vote is subject to strict scrutiny analysis.

The fact that the right to vote is contained in the body

of the Texas Constitution should contravene Respondents' attempt to persuade this court that only those Texas Constitutional provisions contained in the Article I "Bill of Rights" establish rights guaranteed to the people, while the balance of the Texas Constitution merely delegates authority to the legislature and does not establish fundamental rights subject to strict scrutiny analysis. To suggest that the structure of the Texas Constitution compels an interpretation which materially differs from the guidelines established by the United States Supreme Court in Rodriguez is to adopt too restrictive a view of fundamental rights analysis.

The issue in this dispute is not whether the location of the education provisions in the Texas Constitution justifies fundamental rights analysis, but instead, whether the very existence of these provisions in the Texas Constitution compels fundamental rights analysis when coupled with the Constitution's expressed affirmation that education is "essential to the preservation of the liberties and rights of the people[]...." See Tex. Const. art. VII, §1. Viewed accordingly, it is clear that the Third District Court of Appeals erred in holding that the Texas education finance system does not compel strict scrutiny analysis under the Texas Constitution's Equal Protection Clause.

B. Public Education in Texas is Fundamental to an Individual's Exercise of the Protected Rights and Liberties Established by the Texas Constitution so as to Compel Strict Scrutiny Analysis of the Texas Education Financing System.

1. The Role of Education and Nexus Theory in the Federal Courts

Although the United States Supreme Court held in Rodriguez that education is not a fundamental right under the U.S. Constitution, the Court clearly has recognized the essential role that education plays in the preservation of our democratic society. In Brown v. Board of Education., 347 U.S. 483, 493 (1954), the Court recognized that:

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today, it is a principal instrument to awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of education. Such an opportunity where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

The eradication of state sponsored discrimination in education facilities ushered in by the Court's ruling in Brown brought an end to the doctrine of "separate but equal", which imposed an injustice on innocent school-aged children of minority descent who were forced to bear the adverse consequences of decisions made by legislators and judges who clung to outdated

viewpoints on education and impeded social progress. It is rather unfortunate that, 45 years after the Court's landmark decision in Brown, society is still debating whether an innocent school -aged child (black, white, or Mexican), who is compelled by statute to attend school and who cannot make his or her views known through the ballot box, has a fundamental Constitutional right to equal educational opportunity.

More recently, the Court has reaffirmed the vital role that education plays in preserving our society. In Plyler v. Doe, 457 U.S. 202 (1982), the Court held that Texas' denial of access to free public schools to undocumented children violated the U.S. Constitution despite the absence of a fundamental right to education. The Court reasoned that:

> Public education is not a "right" granted individuals by the [U.S.] Constitution. But neither is it merely some governmental "benefit" indistinguishable from other forms of social welfare legislation. Both the importance of education in maintaining our basic institutions, and the lasting impact of its deprivation on the life of the child, mark the distinction... In addition, education provides the basic tools by which individuals might lead economically productive lives to the benefit of us all. In sum, education has a fundamental role in maintaining the fabric of our society. We cannot ignore the significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests.

457 U.S. at 221 (citations omitted). (Emphasis supplied.)

In Rodriquez, the Supreme Court refused to invalidate the same dual financing system presently under review by this court. The Supreme Court rejected the argument that education is a fundamental right because there is no explicit right to education under the U.S. Constitution, nor could such a fundamental right be implied. 2 411 U.S. at 35.

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2 In a compelling dissent, Justice Marshall queried as to where the Constitution refers to privacy, interstate travel, or the right to vote, all of which have been protected as fundamental by the Court. 411 U.S. at 101-02 (Marshall, J., dissenting).

Furthermore, despite the Court's express recognition in Brown and Plyler of the vital role that education plays in our society, the Court nonetheless rejected the argument that the "nexus" 3 between education and specific constitutional guarantees such as voting and free speech is so close that education adopts a fundamental nature which requires strict scrutiny of any legislative enactment which infringes upon it. 411 U.S. at 36-38. The Court was particularly concerned with "the logical limitation on [the] nexus theory..." and whether a finding that education is a fundamental right under "nexus" analysis would cast serious doubts on earlier Court decisions.4

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3 Justice Brennan eloquently explained the "nexus" theory when he noted that:

> [F]undamentality is, in large measure, a function of the rights' importance in terms of the effectuation of those rights which are in fact constitutionally guaranteed. Thus, as the nexus between the specific constitutional guarantee and the nonconstitutional interest draws closer, the nonconstitutional interest becomes more fundamental and the degree of judicial scrutiny applied when the interest is infringed on a discriminatory basis must be adjusted accordingly.

Rodriguez, 411 U.S. at 62 (Brennan, J., dissenting.)

4 Justice Frankfurter recognized long ago, however, that the Court is not compelled to look beyond the controversy before it in resolving Constitutional issues. He stated in New York v. United States, 326 U.S. 572, 583 (1911), that:

> The process of Constitutional adjudication does not thrive on conjuring up horrible possibilities that never happen in the real world and devising doctrines sufficiently comprehensive in detail to cover the remotest contingency. Nor need we go beyond what is required for a reasoned disposition of the kind of controversy now before the Court.

(cited with approval in Garcia v. San Antonio Metro. Transit Auth., 469 U.S. 528, 556 (1985)).

The Third District Court of Appeals and the Respondents concede that education is a vitally important interest which occupies an important role in our society. See Kirby v. Edgewood Ind. School Dist., et al., No. 3-87-190-CV (1988) at 6; see generally Andrews Brief at 20-21, Eanes Brief at 21. It has also been conceded that the Texas educational finance system cannot sustain constitutional scrutiny if education is deemed to be a fundamental right. See San Antonio Ind. School Dist. v. Rodriguez, 411 U.S. 1, 16-17 (1973).

Respondents and the Third District Court of Appeals, however, urge this court on the basis of Rodriguez, to reject "nexus" theory analysis and render a decision which would permit the State of Texas, through its discriminatory education finance system, to continue to operate a school system which generates substantial interdistrict funding disparaties to the detriment of students in the lesser funded school districts. See District Court Findings of Fact and Conclusions of Law at TR.558-60.

While the Court's ruling in Rodriguez is persuasive, it does not compel this court to conclude that education is not a fundamental right under the Texas Constitution, nor does it preclude the use of the "nexus" theory to reach the conclusion that the Texas education financing system compels strict scrutiny analysis. See Whitworth v. Bynum, 699 S.W.2d 194, 196 (Tex. 1985) ("The states are free to accept or reject federal holdings and to set for themselves

such standards as they deem appropriate so long as the state action does not fall below the minimum standards provided by the federal constitutional protections") (citing Brown v. State, 657 S.W.2d 797 799 (Tex. Crim. App. 1983)). In a recent article, Justice Brennan, addressing the issue of individual rights under State constitutions wrote that:

> It is simply that decisions of the [United States Supreme] Court are not, and should not be, dispositive of questions regarding rights guaranteed by counterpart provisions of state law. Accordingly, such decisions are not mechanically applicable to state law issues, and state court judges and the members of the bar seriously err if they so treat them.

Brennan, State Constitutions and the Protection of Individual Rights, 90 Harv. L. Rev. 489, 502 (1977). Furthermore, a finding that the Texas education finance system compels strict scrutiny analysis under the Texas Constitution on the basis of the "nexus" theory does not raise the same practical uncertainties which concerned the Court in Rodriguez.

2. The Texas Constitution Establishes an Express "Nexus" between Education and the Enjoyment and Exercise of Other Fundamental Rights and Protected Liberties Outlined in the Texas Constitution.

Unlike the U.S. Constitution, which makes no expressed reference regarding the fundamental nature of education as it relates to the preservation of other Constitutionally protected rights and liberties, the Texas Constitution establishes a direct link between education and other protected rights and liberties. Tex. Const. art. VII, §1, provides that "[a] general diffusion of knowledge being essential to the preservation of the liberties and

rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools." (Emphasis supplied.)

Clearly, the personal rights and liberties granted by the Texas Constitution's "Bill of Rights" are considered fundamental and inviolate. See Tex. Const. art. I, §29; see also Faulk v. Buena Vista Burial Park Ass'n., 152 S.W.2d 891, 894 (Tex. App. - El Paso 1941). Furthermore, as noted above, the right to vote in State elections has been elevated to the status of a fundamental right with which the State cannot improperly interfere. See generally, Dunn v. Blumstein, 405 U.S. 330 (1972); Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966); Whatley v. Clark, 482 F.2d 1230 (5th Cir. 1973), cert. denied, 415 U.S. 934 (1974).

The Texas Constitution establishes a direct and fundamental link between public education and the above-cited rights and liberties. Not even the fundamental rights of equal protection, Tex. Const. art. I, §3, freedom of religion, Tex. Const. art. I, §6, freedom of speech, Tex. Const. art. I, §8, or suffrage, Tex. Const. art. VI, all of which clearly are essential to the preservation of democratic society, are prefaced by language which expressly declares their fundamental nature.

This express recognition by the framers of the Texas Constitution that education is essential to the preservation of other protected rights and liberties, is clearly evidence of their intent to establish a critical link between education and other

protected rights and to distinguish education from the purely legislative-type provisions of the Texas Constitution such as the establishment of county poor houses and farms, Tex. Const. art. XVI, §8, roads and bridges, Tex. Const. art. XVI, §24, mechanics' liens, Tex Const. art. XVI, §37, and other similar provisions.

The fact that the Texas Constitution expressly recognizes the education is inextricably linked to the preservation of other protected rights and liberties also ameliorates the Court's concern in Rodriguez as to the practical boundaries of "nexus" analysis. As noted above, the Rodriguez Court concluded that the logical limitations of the "nexus" theory would be difficult to perceive under the U.S. Constitution since the Court could not distinguish the importance of education "from the significant personal interests in the basics of decent food and shelter." Rodriguez, 411 U.S. at 37.

The Texas Constitution, on the contrary, with its express recognition of the fundamental role that education plays in the preservation of other protected rights and liberties, does not require this court judicially to select education over other significant necessities. Unlike education, food and shelter are not expressly provided for in the Texas Constitution. Had the framers of the Texas Constitution wanted the State of Texas to provide for these other basic necessities, they would have declared them to be indispensable to the meaningful exercise of protected rights and liberties and compelled the State to provide them.

Nonetheless, Respondents seek to persuade this court on

the basis of recent decisions in which the courts in select other States have rejected strict scrutiny analysis despite the existence of State Constitutional provisions which expressly address public education. See Andrews Brief at 17-20 and Eanes Brief at 17-19 (citing Fair School Finance Counsel of Oklahoma, Inc. v. State of Oklahoma, 746 P.2d 1135 (Okla. 1987); Olsen v. State, 554 P.2d 139 (Or. 1976); Lujan v. Colorado State Bd. of Educ., 458 A.2d 754 (Md. 1983); Board of Educ. v. Waiter, 390 N.E.2d 813 (Ohio 1979), cert. denied, 444 U.S. 1015 (1980)).

However, Respondents fail to inform this court that the State constitutional provisions addressed in each of the above-cited cases do not expressly declare that education is essential to the preservation of protected rights and liberties. See Okla. Const. art. XIII, §§1-8; Or. Const. art. VIII, §§1-6; Colo. Const. art. IX, §§1-16; Md. Const. art. VIII, §§1-3; Ohio const. art. VI, §§1-5.

By contrast, a number of States which have gone beyond the "nexus" theory and determined that education is an outright fundamental right, have language in their State constitutions which mirrors the Texas Constitution's declaration that education plays a vital role in the enjoyment and exercise of other protected rights and liberties. See Ark. Const. art. XIV, §1 ("Intelligence and virtue being the safeguards of liberty and the bulwark of a free and good government..."); Mont. Const. art. X, §2 ("Equality of educational opportunity is guaranteed to each person of the state"); Cal. Const. art. IX, §1 ("A general diffusion of knowledge

and intelligence being essential to the preservation of the rights and liberties of the people.....").

In short, the Texas Constitution, like the Arkansas, Montana, and California constitutions, clearly establishes an express "nexus" between public education and other protected rights and liberties. Since public education in Texas is expressly declared fundamental to the enjoyment and exercise of an individual's other protected rights and liberties, any legislative enactment which interferes with or infringes upon education must be subject to strict scrutiny analysis. Accordingly, the Third District Court of Appeals erred when it failed to subject the Texas education finance system to strict scrutiny review.

3. Federal Case Law Supports the Conclusion that Education is Fundamentally Linked to the Enjoyment and Exercise of Other Protected Rights and Liberties

Despite the Supreme Court's disinclination in Rodriguez to use "nexus" theory analysis to compel strict scrutiny analysis of the Texas education finance system, it is inescapable that the Court has consistently recognized a fundamental link between education, our democratic society, and the rights and liberties protected by both the U.S. Constitution and the Texas Constitution. The Petitioner contends that this recognition is highly persuasive and supports this court's use of "nexus" theory analysis in the present matter under the more accommodating provisions of the Texas Constitution.

Concerning the inextricable link between public education and the preservation of our democratic ideals, the Court recognized shortly before its landmark decision in Brown, that the public school system in our country is "[d]esigned to serve as perhaps the most profound agency for promoting cohesion among a heterogeneous democratic people[]..." See McCollum v. Board of Educ., 333 U.S. 203, 216 (1947) (Frankfurter, J., concurring). The Court further concluded in McCollum that "[t]he public school is at once the symbol of our democracy and the most pervasive means of promoting our common destiny." Id. at 231.

More recently, the Court noted that Americans regard public schools as a most vital civic institution for the preservation of a democratic system of government. See Abington School Dist. v. Schempp, 374 U.S. 203, 230 (1962) (Brennan, J., concurring). The Court in Abington clearly appreciated the revered status of public education when it concluded that "[i]t is therefore understandable that the constitutional prohibitions encounter their severest test when they are sought to be applied in the school classroom." Ibid.

Furthermore, just one year before its decision in Rodriguez, the Court recognized in Wisconsin v. Yoder, 406 U.S. 205, 213 (1972), that "[p]roviding public [education] ranks at the very apex of the function of a state." The Court also concluded that "some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence." Id. at

221. The Court's astute awareness of the essential nature of the public education system was further evidenced in Yoder by its conclusion that "education prepares individuals to be self-reliant and self-sufficient participants in society." Ibid.

Clearly the above-cited cases support the conclusion that public education in Texas is fundamentally linked to the people's inherent political power, which is an inalienable right guaranteed by Tex. Const. art. I, §2. It is undeniable that education can instill in a school-aged children an interest in the very political process that dominates their lives and can sharpen the verbal, writing, and reasoning skills that are essential for active participation in the political process.

Too often it is only the well-educated members of our society who can present their viewpoints in a precise and persuasive manner so as to ensure that they benefit from our system of responsive government. It is indisputable that educated citizens are in a far better position to protect their Constitutional rights, and are more apt to participate directly in the political process beyond exercising the right to vote. Tex. Const. art. VII, §1, clearly appreciates this reality by recognizing that "[a] general diffusion of knowledge [is] essential to the preservation of the liberties and rights of the people...."

In addition to recognizing the fundamental link between education and the people's inherent right to control the terms and conditions of their own governance through the political process, the Court's opinions also recognize an essential link between

education and other fundamental rights and liberties protected by both the U.S. and Texas Constitutions. For instance, in Sweezy v. New Hampshire, 354 U.S. 284 (1956), the Court recognized the sensitive relationship between education and the right to free speech guaranteed by the First Amendment to the U.S. Constitution and Tex. Const. art. I, §8.

In Sweezy, the court reversed the petitioner's conviction for contempt for failing to answer questions which were posed to him pursuant to the State Attorney General's investigation of "subversive persons" in the State, and which concerned a lecture he delivered at the State University. In assessing the "nexus" between public education and the fundamental rights to free speech and association, the Court concluded that "[t]eachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die." Id. at 250.

Similarly, the Court observed in Keyishian v. Board of Regents, 385 U.S. 589, 603 (1967), that:

> The vigilant protection of [First Amendment] freedoms is nowhere more vital than in the community of American schools.... The classroom is peculiarly the marketplace of ideas. The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues, [rather] than through any kind of authoritative selection....

(Citations omitted.) (Emphasis supplied.) See also Tinker v. Des Moines School Dist., 393 U.S. 503, 512 (1969); Epperson v. Arkansas, 393 U.S. 97, 104-05 (1963). Furthermore, the Court

recognized in William v. Rhodes, 393 U.S. 23, 32 (1968), that a system of "[c]ompetition in ideas and governmental policies is at the core of our electoral process and of the first amendment freedoms."

Certainly, the above-cited cases do not envision that this competition in ideas and governmental policies protected by the First Amendment to the U.S. Constitution and Tex. Const. art I, §8, is to be battled on a playing field such as the one created by the public education finance system in Texas which discriminates inherently against one set of players. By permitting the unequal distribution of taxable district property wealth directly to impair the ability of the poorer school districts to provide the same quality of education that the wealthier districts can provide with the same or substantially less tax effort, the Texas public education finance system has "rigged" the "competition" in favor of those children who attend the wealthier school districts.

Clearly the free speech guarantee, which is closely linked to the system of public education, becomes an empty promise when viewed in terms of the Texas public education system. Since the quality of education provided to the children in the poorer school districts is so significantly disparate from that provided in the wealthier school districts, it is inescapable that the intelligent and robust exchange of ideas that will shape the minds of our future leaders is most likely to occur in the wealthier school districts. Because the Texas education finance system has such a direct and significant impact on the free exchange of ideas

protected by both the U.S. and Texas Constitutions, the State of Texas should be required to satisfy the compelling State interest test.

Finally, the effect of education on the Constitutionally protected right to vote is perhaps the most persuasive argument in favor of adopting "nexus" theory analysis in the present matter. As noted earlier, access to the State franchise has been afforded special protection in the nature of a fundamental right because "the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights." See Reynolds v. Sims, 377 U.S. 533, 562 (1963). In Texas, the right to vote is contained in Tex. Const. art. VI.

In his dissenting opinion in Rodriguez, Justice Marshall cited a United States Department of Commerce, Bureau of the Census report in support of the irrefutable conclusion that a direct link exists between educational level and participation in the electoral process. See Rodriguez, 411 U.S. at 114 (Marshall, J., dissenting). Furthermore, in Serrano v. Priest, 5 Cal. 3d 584, 487 P.2d 1241, 1258 (Cal. 1971), [6] the California Supreme Court recognized that "[a]t mimimum, education makes more meaningful the casting of a ballot."

6
The court's decision in Serrano was effectively undercut by the Supreme Court's decision in Rodriguez which denied fundamental rights status to public education under the U.S. Constitution. Subsequently, the California Supreme Court declared that public education was a fundamental right under the California Constitution for the same reasons given in its earlier decision. See Serrano v. Priest, 18 Cal. 3d 728, 557 P.2d 929, 957 (Cal. 1976).

The court went on to conclude that, "[m]ore significantly, [education] is likely to provide the understanding of, and the interest in, public issues which are the spur to involvement in other civil and political activities." Ibid.

Additionally, the Court recognized in Gaston County v. United States, 395 U.S. 285, (1969), that the quality of education offered can be determinative in whether a school-aged child enters or remains in school. Accordingly, by financing education in a manner which creates tremendous disparities in the quality of education provided across school districts Statewide, the State of Texas has unfairly disadvantaged the children in poorer school districts by significantly decreasing the likelihood that they will fully participate in the democratic process. This is clearly the type of result that the "nexus" theory is intended to guard against by recognizing the fundamental link between the Constitutional right to participate in the electoral process and the personal interest in public education, and by requiring that any legislation which impairs or infringes the latter so as to affect an individual's exercise of the former must be premised on the basis of a compelling State interest.

In short, the above analysis has shown that the Supreme Court has consistently found a fundamental link between education, our democratic ideals, and the rights and liberties protected by both the U.S. Constitution and the Texas Constitution. Despite the Court's rejection of "nexus" analysis in Rodriguez, the Court's decisions clearly support its use under the provisions of the Texas

Constitution so as to compel strict scrutiny of the Texas education finance system.

II. INDIVIDUAL STATE COURTS MAY, AND INCREASINGLY HAVE, AFFORDED CITIZENS GREATER RIGHTS UNDER THEIR STATE CONSTITUTIONS THAN THE FEDERAL COURTS GRANT UNDER THE UNITED STATES CONSTITUTION.

With the advent in the last thirty years of a concern for individual rights, it has been urged by many that State supreme courts should play a greater role in extending these rights beyond that of federal interpretation. "State constitutions, too, are a font of individual liberties, their protections often extending beyond those required by the Supreme Court's interpretation of federal law. The legal revolution which has brought federal law to the fore must not be allowed to inhibit the independent protective force of state law - for without it, the full realization of our liberties cannot be guaranteed. "Brennan, State Constitutions and Protection of Individual Rights," 90 HARV.L.REV. 489 (1977).

While State constitutions cannot subtract from rights guaranteed by the United States Constitution, State constitutions can and often do provide additional rights for their citizens. See, Oregon v. Kennedy, 456 U.S. 667 (1982). State constitutions originally were the primary guarantors of individual rights. Linde, First Things First: Rediscovering the States' Bill of Rights, 9 U.BALT.L.REV. 379, 380-83 (1980). Before the Civil War, State and local governments played a more active governing role

than the federal government, yet at that time the Federal Bill of Rights did not apply to them. Nowak, Rotunda and Young, Constitutional Law 412 - 413 (2d ed. 1983). Only State Judiciaries relying upon State constitutions protected individual rights from the State governments before the Fourteenth Amendment's adoption in 1868 and its selective incorporation in this century. Linde, at 382.

Moreover, the promises of the Civil War were thereafter embodied in the Fourteenth Amendment. Brennan, at 490. "The citizens of all our states are also and no less citizens of our United States, ... the laws from our state governments no less than from our national one." Ibid. Basically, the federal courts set the minimum and the States' courts may expand from there. Furthermore, the State decisions cannot be overturned by the United States Supreme Court; they are not even reviewable by the Court. Ibid.

In Pruneyard Shopping Center v. Robins, 447 U.S. 74 (1980), the Supreme Court was confronted with the problem of how to approach the scope of State constitutional issues. More specifically, that case presented the question of whether State constitutional provisions which permit individuals to exercise free speech and petition rights on the property of a privately owned shopping center to which the public is invited violate the shopping center owner's property rights under the Fifth and Fourteenth Amendments. Also, the Court had to look at free speech rights under the First and Fourteenth Amendments.

Pruneyard was a privately owned shopping center that has a policy not to permit any visitor to engage in the circulation of petitions. Appellees were high school students. They peacefully distributed pamphlets and asked passersby to sign petitions to be sent to Congress. The petitions expressed support for the student's opposition to a United Nations resolution against "Zionism."

The California Supreme Court held that the California Constitution protects "speech and petitioning reasonably exercised, in a shopping center even when centers are privately owned." Prueneyard Shopping Center v. Robins, 23 Cal. 3d 899 (Cal. 1979). Article 1, §2 of the California Constitution provides:

> Every person may freely speak, write and publish his or her sentiments on all subjects being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.

Article 1, §3, of the California Constitution provides:

> People have the right to petition government for redress of grievances.

The United States Supreme Court, when presented with the same Constitutionally based issues as presented in Pruneyard, has held that such conduct was not protected under the First Amendment. Lloyd Corp. v. Tanner, 407 U.S. 551 (1972). In Lloyd, the court reasoned that "property does not lose its private character simply because it is open to the public." Id. at 569.

However, Pruneyard can be distinguished. The Court stated that the State has the authority to exercise its police power or its sovereign right to adopt in its own Constitution individual

liberties more expansive than those conferred by the Federal Constitution. Cooper v. California, 386 U.S. 58 (1967). In Lloyd, there was no State constitutional or statutory provision that had been construed. The Court will not interfere with the discretion of State legislatures or courts if they choose to follow their own Constitutions as long as rights are being expanded and not taken away.

Indeed, as was noted by Justice Brennan, "more state courts are construing state constitutional counterparts of provisions of the Bill of Rights as guaranteeing citizens of their states even more protection than the federal provisions, even those identically phrased." Brennan, State Constitutions and the Protection of Individual Rights, 90 HARV. L. REV. 489, 495 (1977). On other occasions however, greater State - based protections stem from State constitutional provisions with no federal counterpart or ones that are more broadly worded than their federal counterpart. In any event, it is clear that the present and essential function of State courts in our federal system is not only to act as a second line of defense for those rights protected by the federal Constitution, but also to serve as an independent source of supplemental rights unrecognized by federal law.

A. Other States have looked to their State's educational financial scheme and have recognized wealth as a suspect classification and education as a fundamental right.

The leading case in the area of education is Serrano v. Priest, 18 Cal. 3d 728 (Cal. 1977). Over 90% of the public funds in California were derived from local district taxes on real property and aid from the State School Fund. Therefore, the amount of revenue which a district can raise in this manner depends largely on its tax base. The remaining school revenue comes from the State School Fund pursuant to the foundation program. In this program, the State undertakes to supplement local taxes to provide a "minimum amount of guaranteed support to all districts." Id. at 934. A disparity exists from district to district.

The California Supreme Court classified wealth as a suspect classification. It did so based on substantial and convincing evidence insofar as the present system drew distinctions on the basis of district wealth. The court reasoned that the California school financing system, because it rendered the educational opportunity available to students a function of taxable wealth, was not shown by the State to be necessary to achieve a compelling State interest. Id. at 953.

Connecticut is another State that has addressed the issue of education. The higher tax rates generate tax revenues in comparatively small amounts and property-poor towns cannot afford to spend for the education of their pupils, on a per pupil basis, the same amounts that property-rich towns do. The system in Connecticut ensured that regardless of the educational needs or

wants of children, more educational dollars were allotted to children who live in property-rich towns than to children who live in property - poor towns. Horton v. Meskill, 376 A.2d 359 (1977). The Connecticut court decided that education is a fundamental right, "that pupils in the public schools are entitled to the equal enjoyment of that right and that the state system of financing public schools cannot pass the test of strict judicial scrutiny as to its constitutionality." Id. at 370.

B. Other State Supreme Courts in construing "efficient school" clauses similar to the one found in Article VII, Section 1 of the Texas Constitution, have refused to uphold their respective school financial systems.

The Supreme Courts of several States including West Virginia, Kentucky, Arkansas, New Jersey, and Wyoming have found their public school finance systems unconstitutional because of their respective "thorough and efficient" clauses. Texas' education clause is found in Article VII, Section 1 and reads as follows:

> A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

Petitioners contend that the present school finance system in place in Texas is inequitable, is in no way efficient and does not provide for a general diffusion of knowledge in the sense of providing equal educational opportunities to all.

The most recent State supreme court case addressing this issue was decided by the Supreme Court of Kentucky in the case of

Rose v. The Council for Better Education, Inc., No. 88-SC-804-TG, slip op. (Ky. June 8, 1989). Relying on a State constitutional provision which required the General Assembly to "provide an efficient system of common schools throughout the state" and which is strikingly similar to the clause found in the Texas Constitution, the Supreme Court of Kentucky determined that education is a fundamental right guaranteed by the Kentucky Constitution. The court also held that an "efficient system of common schools" must be defined as one in which "every child in this Commonwealth would be provided with an equal opportunity to have an adequate education." Id. at 58. The court ruled that the General Assembly has not complied with its constitutional mandate to provide "an adequate, equal and substantially uniform educational system" throughout the State. Justice Vance, concurring in part and dissenting in part, reiterated the majority's notion that the word "efficient" must be construed to include the requirement of substantial equality of educational opportunity. Id. at 3.

The district court in the case at bar also concluded that Texas' present school finance system was inefficient and was in violation of Tex. Const. Art VII, §1. The court of appeals, however, refused to consider the issue, stating that it was "essentially a political question not suitable for judicial review." Kirby v. Edgewood Ind. School Dist, et al., No. 3 - 87 - 190 - CV slip op. at 13 (Tex. Ct. App. 1988) However, as Justice Gammage pointed out in his dissent from the majority opinion of the

court of appeals,

> [c]learly it is within the discretion of the legislature, in the exercise of its constitutional duty, to determine what is a suitable provision for an 'efficient' school system; but it can hardly be argued that [the present school finance] system which denies fully one - third of its students of a substantially equal education opportunity to attain even the basic minimum required standards it imposes, is 'efficient'. What may be 'suitable' is a proper subject for legislative political debate and decision, but the system resulting from that process must be 'efficient' enough to preserve protected constitutional rights in accordance with necessary, discernible and manageable legal standards.

Kirby v. Edgewood Ind. School Dist. et al., No. 3 - 87 - 190 - CV Slip op. at 15 (Tex. Ct. App. 1988) (Gammage, J. dissenting) citing Mumme v. Marrs, 120 Tex. 383, 40 S.W.2d 31 (1931).

Petitioners question how any system with such great disparities as the present one could be considered "efficient", regardless of how that term is defined. To allow a system in which the wealthiest school district in Texas has over $14,000,000 of property wealth per student while the poorest district has approximately $20,000 per student, to continue would be to make the efficient school clause of the Texas Constitution meaningless. Such a result contravenes well-settled principles of constitutional interpretation adopted by this Court. It is clear that constitutional provisions must be interpreted in a manner to give effect to every phrase of the document and that provisions should not be interpreted so as to be rendered meaningless. In the Interest of Mclean, 725 S.W.2d 696 (Tex. 1987).

"Efficient" under the Kentucky Constitution was defined by the trial court as a system which required "substantial uniformity,

substantial equality of financial resources and substantial equal educational opportunity for all students." Id. at 7. Efficient was also interpreted to require that the educational system be adequate, uniform and unitary. This definition was accepted by the Supreme Court of Kentucky and should also be adopted by this Court in analyzing the efficiency of the present school finance system in Texas. However this court chooses to define an "efficient system", the provision of substantially uniform and equal educational opportunities regardless of economic status or place of residence must be a central element in any system which can hope to be considered an efficient one. Under such a definition, the present Texas school finance system is clearly lacking as the evidence in the record and the many findings of the trial court amply demonstrate.

III. THE TEXAS COURTS AFFORD TEXAS CITIZENS GREATER RIGHTS UNDER THE TEXAS CONSTITUTION THAN THE UNITED STATES SUPREME COURT AFFORDS UNDER THE UNITED STATES CONSTITUTION IN SEVERAL AREAS.

For the same reasons that other State courts have provided their citizens even greater protections than the federal courts, so too have the Texas Courts extended such rights. In case after case, the justices of the supreme court of Texas have not hesitated to grant Texas citizens greater rights than are afforded them under the federal Constitution where the provisions of the Texas constitution, because they are often more broadly worded than their federal counterparts, have mandated such a result. In so doing the

court does not question the wisdom behind a constitutional provision, but instead gives each protection the dignity and effect intended. Koy v. Schneider, 110 Tex. 394, 221 S.W. 880 (1920).

Texas courts have been in the mainstream of the movement to revitalize and re-interpret State constitutional provisions and to go beyond the protections of the United States Constitution. In Lucas v. United States, 757 S.W.2d 687 (Tex. 1988), Justice Gonzalez perhaps states it best.

> Power to restrict governmental power and the guaranteeing of individual rights in the present constitution reflect Texas values, customs and tradition. Our constitution has independent vitality and this court has power and duty to protect the additional state guaranteed rights of all Texans. By enforcing our constitution, we provide Texans with their full individual rights and strengthen the federal ones.

With regard to granting greater rights, much discussion has been given to the free speech provision of the Texas Constitution. Some 39 States, including Texas, protect freedom of speech in comprehensive terms that exceed limitations on governmental action contained in the First Amendment to the U.S. Constitution. The Texas Bill of Rights, Tex. Const. art. I, §8, provides that "every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall be passed curtailing the liberty of speech or the press." In O'Quinn v. State Bar of Texas, 763 S.W.2d 397, 402 (Tex. 1988), this Court, notwithstanding that the case before it did not require it to decide whether Texas' guarantee of free speech affords more protection than the corresponding federal

provision, nevertheless stated that "[i]t is quite obvious that the Texas Constitution's affirmative grant of free speech is more broadly worded than the first proscription of Congress from abridging freedom of speech." Thus, it is clear that many States, like Texas, have broader free speech and assembly protections, which are often positively phrased as affirmative grants of rights rather than simple restrictions on government power observed in the First Amendment to the federal Constitution. These more expansive guarantees, which are within a State's "sovereign right" as recognized by the federal Supreme Court, offer a significant distinction upon which courts rely to construe their State constitution. Ibid.

Additionally, the Texas Supreme Court has expanded the rights of criminal defendants. When a defendant voluntarily takes the stand before the jury he is subject to the same rules as any other witness in that he may be impeached, contradicted, and cross-examined on new matters. Williams v. State, 607 S.W.2d 577 (Tex.Cr.App.1980). Where there are overriding constitutional or statutory prohibitions, however, the defendant may not be treated as just another witness. Jenkins v. Anderson, 447 S.W.2d 231 (Tex. 1969). The extent of just how far these prohibitions extend is different in Texas than it is in the federal court system.

In Doyle v. Ohio, 426 U.S. 610 (1976), the U.S. Supreme Court held that a defendant could not be impeached concerning his failure to relate exculpatory matters to officers after he had been arrested and after he had been advised of his Miranda warnings.

The Court stated:

> While it is true that the Miranda warnings contain no express assurance that silence will carry no penalty, such assurance is implicit to any person who receives the warnings. In such circumstances, it would be fundamentally unfair and a deprivation of due process to allow the arrested person's silence to be used to impeach an explanation subsequently offered at trial. Id. at 618.

The Texas Supreme Court, however, has chosen to extend this rule to include pre-Miranda silence. Sanchez v. State of Texas, 707 S.W.2d 575 (Tex. 1986). The court looked to the Fifth Amendment and to its own constitution in pertinent part. According to Article I, §10, Texas Bill of Rights, "[a]n accused shall not be compelled to give evidence against himself." As Justice Clinton stated in his concurrence in Sanchez, "[t]he core of §10 privilege that one may not be compelled to give evidence against oneself is the right to remain silent." Sanchez v. State of Texas, 707 S.W.2d 575 (Tex. 1986). The right to remain silent does not arise when arresting officers decide to verbalize that right, but rather at the very moment the arrest is accomplished. Therefore, a defendant may not be impeached through the use of post - arrest, pre-Miranda silence because such impeachment violates the defendant's right to be free from compelled self-incrimination. Ibid.

As the heart of Justice Gonzalez' language suggests, Texas has been at the forefront of expanding individual rights to comport with the traditions and the spirit of Texans. Although the United States Supreme Court has not recognized education as a fundamental right, this should in no way preclude the Texas Courts from

recognizing it as such under the Texas Constitution.

A. Due to the expansive language of the Texas Bill of Rights, the Texas courts have afforded Texas citizens greater and more varied individual rights than does the United States Supreme Court and this approach should extend to the area of education.

As well as giving greater rights under its Constitution, Texas has attempted to take different approaches than those used by the United States Supreme Court. Texas has done so in the area of gender related issues. In In The Interests of McLean, 725 S.W.2d 696 (Tex. 1987), Laura McLean, unwed, gave birth to a child. The father of the child, Billy Dean Wise, was married to another woman. Ms. McLean decided to give up the child for adoption; however, Wise filed for legitimation, seeking managing conservatorship. Wise filed an application for writ of error, alleging violations of both the United States and Texas Constitutions, because he was forced to prove that legitimation would be in the child's best interest.

When a child is born to a woman not married to the child's father, she automatically exercises all the rights, duties and privileges of the parent-child relationship. Tex.Fam.Code Ann. § §12.04. The requirements for a man who is not married to the child's mother are different. He has all of the parental rights, duties, and responsibilities only if the mother consents. Tex.Fam. Code Ann. §13.21(b). If consent is denied, the father must prove that the child's best interest compels allowing him to exercise full parental rights. The issue confronted by the Texas Court

involved discrimination on the basis of gender, which it found.

In this instance, the justices focused on the Equal Rights Amendment to the Texas Constitution. It must be noted that federal precedent is not controlling in this matter because there exists no federal constitutional counterpart. The court declined to decide this case on equal protection or due process grounds. Instead of rendering the added guarantees meaningless, the court concluded that the Equal Rights Amendment to the Texas Constitution is more extensive and provides more specific protection than both the United States and Texas due process and equal protection guarantees.

The Court's reading of the Equal Rights Amendment to the Texas Constitution elevated gender to a suspect classification. Such discrimination is allowed only when the proponent of the discrimination can prove that there is no other manner to protect the State's compelling interest. Zablocki v. Redhail, 434 U.S. 374, at 388 (1976). The aforementioned sections of the Texas Family Code could not pass constitutional muster under the strict scrutiny analysis utilized by the Texas Supreme Court. It must be noted that this is a departure from the analysis used by the United States Supreme Court, which adopts a less rigorous standard in such cases. As viewed by the U.S. Supreme Court, gender - based classifications necessitate only middle level scrutiny. Middle level scrutiny is applied when a statute burdens a sensitive, but not a suspect, class or impinges on an important right, but not a fundamental right. "It must serve an important governmental

objective and must be substantially related to those objectives." Craig v. Boren, 429 U.S. 190, 197 (1976). Thus it is clear in this instance that the Texas courts have gone far beyond the protections afforded by the federal Constitution by relying on and re-interpreting provisions found in their State constitution. Petitioners contend that this type of approach should also be adopted in considering the issue of the Texas school finance system, especially in light of the prominence of education in the Texas Constitution.

Another area where the Texas courts expand the protections afforded by the United States Supreme Court and the federal courts is in the Texas provision for an open court system. There is no provision in the federal Constitution corresponding to the Texas constitution's "open courts" guarantee. It should be noted that this system is used in 37 other States. Lucas v. United States, 757 S.W. 687 (Tex. 1988). The open court provision states, "All courts shall be open and every person for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law." TEX.CONST. art. I, §13. This provision, which has no federal counterpart, may be interpreted so as to allow citizens of Texas greater access to the courts than is guaranteed to them under the federal Constitution because access to the courts has now been recognized as a substantial State constitutional right. Nelson v. Krusen, 678 S.W.2d 918 (Tex. 1984).

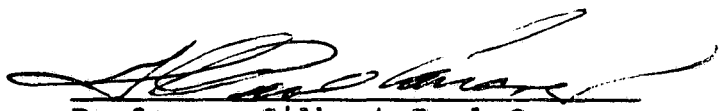
As is evidenced by the previously mentioned cases and statutes, where the federal Constitution is silent with regard to

certain issues or where State constitutional provisions are actually more broadly worded, it is up to the States to construe their own constitutions and to grant greater rights if that is what the particular State constitutional provision mandates. Particularly in Texas, the legislature and the courts have both shown an effort to extend the rights of Texas citizens in several areas. This extension has taken place, in several instances, by creative legislating and, in others, through the courts' reliance on broadly worded State constitutional provisions. If one considers the liberal and open climate of the Texas legislature and courts together with the prominence of education in the Texas Constitution, it follows that education must be brought to the level of fundamental right and wealth considered a suspect classification.

CONCLUSION

For the foregoing reasons, Amicus Curiae Hispanic National Bar Association submits that this Court should grant the Petitioner's Points of Error, and reverse the decision of the Third District Court of Appeals.

Respectfully submitted,



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C 8353

No. C 8353

Edgewood Independent School District, et. al.
Appellants

v.

William Kirby, et. al.
Appellees

BRIEF INSUPPORT OF William Kirby, Appellees, and the Opinion of Court of Appeals, Third District of Texas, The Honorable Bob Shannon, Chief Justice.

COMES NOW, William Berka, and respectfully submits to the Court the following Brief in support of the Third Civil Appeals Court:

Justice Shannon asked a question: In the present appeal, there is no suggestion of unwarranted governmental interference with any person's liberty of whatever kind . . .and generally to enjoy those privileges long recognized as essential to the orderly pursuit of happiness by free men. Roth 408 US. 572. The ruling which this court makes on the pending applications will be control ing on every citizen and taxpayer in Texas- not merely in Bexar County where the case arose. Every parent, citizen, and student will be affected.

The court has previously received amicus curiae briefs from representatives of school districts, both rich and poor, and from political organizations that purportedly represent the poor and underprivileged. These appro aches are essentially bureaucratic, since all of the proponents seek to establish and extend their taxing powers beyond the ability of the taxpayers to pay those taxes. The voters, taxpayers, parents, and students should be able to protect, preserve, and defend their interests and control the actions of their elected representatives. A measure of control by necessity includes mor e than a right of suffrage, because the foxes can clean out the henhouse between elections, and leave the citizens with the feathers, bones, and waste.

According to the Texas Education Agency's Annual Financial Report, 1986, enrollment increased from 1982-86 by 28%, local taxes went up 274%, state aid increased 23%. In all cases spending increased faster than tangible benefits accrued to the benefit of the students. There has been an exponentially multiplication of public school administrators from 2,802 in 1950 to 13,560 in 1985,

a 10,758 increase or 348%. The number of school districts declined from 2,505 in 1950 to 1,061 in 1985, a loss of 1,414 or 56%. For each district closed, 7.6 school administrators were added for each school district that was abolished. Tactics for Taxpayers, Vol 1, No. 4, Spring 1987. Public school employees have increased four times faster than the growth of the private productive sector. Public school employment has increased twice as fast as growth in the private service sector. Public employment has increased 2.8 times faster than population growth. In 1950 52 persons in the private sector supported one teacher. By 1985 one teacher was supported by 31 workers in the private sector. This data suggests that the public education sector has taken a postion that is out of proportion to its contribution. The publi c is receiving less benefits and higher costs.

In their Amicus Brief in Vinson v. Burgess, in the Supreme Court, C 7942, 1989, decided May 31, 1989, the Texas Association of School Boards for 1,061 school districts, asserted: These voters, however well intentioned, have not been and cannot be involved with and informed of the specific financial needs and legal requirements of the bud gets of local government. p. 2. In their conclusions, they state: The voters are not and cannot be informed as to the details of the needs of the districts and the requirements of state law. p. 22. The school districts have confessed in writing that they have a rather poor job in schooling their constitutents in their rights. They admit they have used subtle and pervasive measures to deny students, parents, and taxpayers informationthat they could use to determine if the school districts were providing a service where the benefits were greater than the costs. What they done is train students that are functionally illerate in the operations of their federal, state, and local governments. Any public institution that is guilty of abusing its discretionary powers by refusing to read or instruc t to their students in their fundamental rights certainly have no basis on which to claim they represent the best interests of their stud ents. Political rights are measured by degrees of a assertive citizenry. A docile, obedient, and submissive citizenry is in no position to be assertive and demanding if the state has trained them to be that way through their eduction system. There is no excuse for the state being

involved in training students that are functionally illiterate in their civil and political rights. It ought to be a crime.

Berka was born and raised in Robertson County, Texas. He graduated from Hearne High School, Hearne, Texas, in 1949 and from Southern Methodist University in Dallas, Texas, in 1957, with a degree in Business Administration. He has twelve years of experience with public schools in Texas as a student, and four years of experience with institutions of higher learning thus qualifying him to express an opinion on the matter before this court. He is also the parent of a student that is enrolled in the Lewisville Independent School District, in Denton County, Texas. Berka has submitted two affidavits in support of his opinion of the education of our citizens in their civil and political rights. These affidavits are attached to this Brief.

The primary purpose of this Amicus Cruiae Brief is to assert the rights of one individual, that is certainly equally applicable to every other individual citizen, and taxpaye r in the State of Texas, that the majority opinion of the Third District, Court of Appeals, was essentially correct, but that certain insights concerning indiviual rights might need enlightment. It is prayed that these arguments be consid ered and accepted in good faith. We present them in good faith.

What are the fundamental rights tha t the Court must address in this case. There are three fundamental questions that must be asked. Does the First Amendment protect students from the state imposing a single political orthodoxy to the exclusion of others? Does the protection for the right to be schooled in different political orthodoxies come under the protection of the First Amendment? Secondly, Does the right to be read and instructed in one's civil and political rights come under the pneumbra of the Ninth Amendment to the U. S. Constitution? Thirdly, Does the right of no taxation without direct consent come under the protection of the Ninth Amendment? These three questions must be considered in conjunction with the U. S. Constitution and the first ten amendments, and the 14th amendment, that made the Bill of Rights applicable to the states, and the Bill of

of Rights, of the Texas Constitution, namely, Article I, Section 1, 2, 27, and 29. In Vinson V. Burgess, Justice Spears ruled: Therefore, the particular provisions relating to taxation should be construed together and in conjunction with all provisions of our state constitution. . . We begin with the inalienable rights reserved to the citizens of this state by the Bill of Rights to the Texas Constitution. . .This section has been interpreted as a means to protect the citizens from the abuses of governmental power. . .Article I, Sections 1, 2, and 27 exemplify an intent of the people to retain the ultimat e political power and to maintain che cks and balances upon all governing bodies. . .

In retrospect, the states would not have passed upon the constitution if they was any hint that the common law was not to be respected. The document was cleverly written to make sure the common law that was familiar to the people from 1607 to 1776 was not overturned. The same thi ng happened in Texas in1836. No mention was made to overturn the common law. The voters approved the first constitution because they did not fear that it would not diminish their common law rights.

The purpose of the First Amendment is to protect the Individual in society from government imposed uniformity. To select textbooks, an d require teachers to teach from thos e texbooks, and require students to be taught one political orthodoxy to the exclusion of others of equal importance is a violation of the First Amendment and Section 255.003 of the Texas Election Code. It provides in Section a: an officer or employee of a politi cal subdivision may not spend or aut horize the spending of public funds for political advertising. (c) A person who violates this section commits an offense. An offense under this section is a Class A misdeameanor. In First Amendment terms, an individual is functionally illiterate if he does not have the skills to understand what is happening in the politi cal process and effectively to participate in that system by making his views known. If illiteracy were measured as a function of one's ability to participate in the political process,

it would be apparent that the problem is greater than has been imagined. . . Without the skills necessary to gather information or communicate one's ideas and beliefs, an individual is denie d even minimal partcipation in the political debate. . . Those who are unable to participate in the governing process because of their inability to recognize or articulate their self interest or the nature of their oppression become dehumanized. When individuals are deprived of all contr l over their own destiny and are treated as objects by the rest of society, they come to believe that they are less than humn and therefore unworthy of participating in political process.

The First Amendment tells us that no matter how odious a majority may find th e existence or expression of an idea to be, no matter how apparently corrupt or twisted the idea may be, its expression cannot be suppressed. Such ideas may be argued against, exposed, ridiculed, attached verbally, or subjected to widespread public disfavor , but the power of the state may not be used to suppress them. A current Example is the flag burning case decided by the U. S. Supreme Court. They decided that flag burning was a right of expression under the First Amendment.

When the power of involuntary school socialization is held by the political majori ty. . . that damage the individuals format ion and expression of belief is the same, and the threat to the health of the First Amendment and political system is as great.

At the heart of the American schoo l ideology is the belief that schooling decisions are the proper province of the political majority. .. Majoritarian control of the transmission of personal beliefs, conscience, and world view through schooling is a problem, whose magnitude is equaled only by our massive public refusal to discuss it.

If the schools expose children only to those values and ideas which buttress the status quo and legitimize the position of those in power, it is unlikely that those who are presently oppressed will learn the cause of their oppression or how to overcome it. . . Effective political participation requires a positive self identity, a sense of self wor th that enables one to believe that one deserves to be treated well and that one is capable of doing something about being treated badly.

Our educational system in general and the ubiquitous use of standardized tests in particular force thos e without powerin society to accept the values of the powerful or punish them for holding beliefs that are unacceptable to their oppressors and may well be essential to their own survival.

School discipline is not always an easily recognized form of value inculcation. Hawkins v. Coleman 276 F sup. 1330 (1974). They were trained to be passive, docile, self denying individuals, a process restricting their First Amendment rights of in dividual development and participation in the political process.

Those students who do not share the majoritarian values of the educational establishment may be denied access to the knowledge and skills necessary for them to participate in the political process. Alienation from the dominant values structure may generat e discipline problems or cause poor showings on standarized tests. To make effective schooling available to dissenting students only upon compromise of their First Amendment rights violates the general rule that government benefits may not be conditioned or surrendered of constitutional rights. In West Virginia V. Barnett, the court stated: The state asserts power to condition access to public education on making a prescribed sign and prof session and at the same time to coerce attendance by punishing both parent and child. In its holding the court clearly rejected the states asserted power to make education available only to those who would tolerate the schools invasion of the sphere of intellect and spirit which it is the purpose of the First Amendment to reserve from all official control. . .

The impostion of secular values may constitute as significant values as interference wi t h First Amendment values as the imposition of religious beliefs. On a political level this policy ensures that no group or political majority can use school socialization to maintain or extend its ideology or political power.

The present structure of American schooling - its method of finance and control discriminates against the poor and working classes. . by conditioning the exercise of First Amendment rights of school choice upon the ability to pay while simultaneously eroding that ability to pay with regressive taxes and fees. This arrangement seems no more defensible than denying a man a right to vote because he cannot afford the poll tax. . . We confront the dissenting family with a choice between giving up its basic values as the price of gaining a free education in a public school or paying twice in order t o preserve First Amendment rights. . . It is natural that those who are least able to resist should be most systematically deprived of their ability to dissent in the molding of their children's minds.

Justice Jackson wrote in Virginia v. Barnett: If there is any fixed star in our constitution constellation, it is no official, high, or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. The Court stressed the need for government neutra lity with respect to all orthodoxies.

A question for this Court to ponder is this: Does the State of Texas constitution give to the state legislature the absolute right to require that only one political orthodoxy be taught to the exclusion of others? It is rather simple when one thinks about it. Does the state of Texas embrace the values of Alexander Hamilton, to the exclusion of the values of Thomas Jefferson and Andrew Jackson? In the Hamiltonian view, the very essence of a republican government consists of the absolute sovereignty of the majority. Democracy in America, Alexis De Tocqueville. Tocqueville wrote in 1835: the nation was divided between two opinions, two opinions as old as the world, and which are perpetually to be met with, under different forms and variou s names, in all free communities, the one tending to limit, the other to

extend indefinitely, the power of the people. Hamilton, a federalist, whig, tended to limit the power of the people. Jefferson and Jackson tended to extend the power of the people. Thus a contradi ction exists between these two political orthodoxies that school districts offer their constitutents.

While the law has recognized that teacher s and student s do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. Tinker V. Des Moines ISD 393 US 503 (1969).

The Supreme Court has recognized that value inculcation is inherent in schooling. Pierce V. Society of Sisters 268 US 510 (1925). The court noted tha t the child is not the mere creature of the state, and ruled that the constitution excludes any general powers of the state to standarize its children by forcing them to accept instruction from public teachers only. However, where the state's interest is to disseminate an ideology, no matter now acceptable to some, such interest cannot outweight an individual s First Amendment right to avoid betoming the courier for such messages. Wooley V Maynard 430 US 705 (1927) The First Amendment protects the rights of individuals to hold a point of view different from the majority and to refuse to foster.. .any idea they find morally objectionable. The protection of the the governing powers f the individual through the First Amendment is a necessary part of a system which relies upon the joint consent of the governed. Every citizen must participate in making these decisions, not out of loyalty to some id ealized notion of repulicanism, but out sense of self preservation.

What individual rights are included in the Ninth Amendment? It was Hamilton who said, "If the people wanted to claim a right, they must assert it by some forceful means. Therefore, I am asserting my right under the pneumbra of the Ninth Amendment to be read to and instruced in my civil and polit ical rights. Spooner wrote: The Great Charter and the Charter of The Forest shall be firmly kept and maintained in all points. One of the affirming the Charters requires as follows: That the Charters be deliv ered to every Sheriff of England under the King's Seal, to be read four times a year before the people in the full county, that is at the county

court, that is to wit: the ne xt county court after the Feast of Saint Michael, and the next county court after Christmas, and at the ne xt county court after Easter, and at the next county court after the Feast of Saint John. 28 Edward I, Ch1 1, (1300) Spooner notes: The ancient jury courts kept no records because those who composed the courts could neither make or read records. Their decisions were preserved by the memories of the jurors and other persons present. . . The laws of the King not being print ed and the people unable to read the m if they had been printed must have a great measure unknown to them, and could have received by them only on the authority of the Sheriff. . . Every freeholder in thecounty was obliged to attend the hundred court, and should he refuse this service, his possessions were seized, and he was forced to find surety for his appearance. . . The priests instructed the people in religiou s duties, and in matters regarding the priesthood, and the princes, earls, or eoldormen, related to them the laws and customs of the community. . . .Also by a law of canute to th is effect, in every county, let there be twice a year an assembly, whereas, the bishop and the earl be present, the one to instr uct the the people in divine, and the other in human laws. . . R. Hogue, author of Origins of the Common Law , wrote, "In the most remote counties of England regal judges, sheriffs, and commissioners drilled Englishmen of all classes in the procedures of the royal government and in the law of the land. . .

Section 29, of Article I, of the Texas Bill of Rights has its beginnings with the Magna Charta. Spooner wrote: It is provided by act of Parliment that any judgement be given contrary to any of the points of the Great Charter and Charta de Foresta by the justices, or by any other of the Kings ministers, it shall be undone, and holden for naught.

Perhaps, it is Spooner who defines the parameter in which our next question shall be analyzed. He said, "It is therefore right that the weaker party should be represented in the tribunal which is finally to determine what legislation may be enforced and that no legislation shall be enforced without their consent. In Chapter 12, of the Magna Charta, it reads: No scutage or aid shall be imposed in our king dom except by the common council of the kingdom. . . In the Declaration of Independence, it was changed to read: No Taxation Without Consent.

Coke wrote: ". . .and that both the said Charters shall be sent under the Great Seal to all cathedral churche s throughout the realm, there to remain, and shall be read to the people twice each year."

Furthermore, the fact that a fundamental right may not be enumerated in the Bill of Rights of either our federal or state constitutions is certainly no impediment to its esistence. People v. Belows 397 US 915 (1970). Texas courts have repeatedly protected fundamental interests despite their lack of specific textual bases in our state constitution. Texas State Em ployees Union v. Texas Dept of Mental Health 746 SW 2nd 203 (1987). A state constitution is not a grant of power but instead it operates solely as a limitation of power. Watts v. Mann 187 SW 2nd 917 (1945).

Charles W. Dunn, in American Democracy, writes, "One of the singular virtues of the cons titution was its silence on several important issues. If provisions dealing with these had been written into the document, they might have damaged it irreparably wither in the process of obtaining ratification, or in adopting to changes in later years. . . The paradox of the American Revolution is that the colonists generally rebelled because they felt that their rights as English subjects were being denied. To support their contention, they turned to such Britsh legal landmarks as the Magna Charta, the Habeas Corpus Act of 1679, and the Bill of Rights of 1689. Numerous ideas in the American Declaration of Independence, the constituti on, and the Bill of Rights had their origin in English history. . . Of course, the whole English common law system . . . influenced Americans especially as it conceived as a limitation on the power of the King . . .

In conclusion, it is prayed that the Court will consider these arguments when they make their final decision on financing school di stricts. Financing of school districts is a political question to be resolved by the legislature and th e people. The people shall control the limits of legislative extravagence by and through rollback elections and the petition process. It is prayed that the Court will point to their decision in Vinson, that "Article I, Sec. 1, 2, 27, exemplify an intent of the people to retain the ultimate political power and to maintain checks and balances upon all governing bodies. . .

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Respectfully Submitted,

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AFFIDAVIT

COUNTY OF DENTON

STATE OF TEXAS

BEFORE ME, THE UNDERSIGNED, A Notar y Public in and for Denton County, Texas, on this day personally appeared William Berka, well known to me, and who after by me duly sworn, deposes and says:

I attended the Univ ersit y of Texas, at Austin, Texas, from 1954-55, and transferred to Southern Methodist University, at Dallas, Texas, and graduated from there in 1957 with a degree in Business Administration, BBA, in 1957.

Neither the compulsory or elective curriculum, at the University of Texas or Southern Methodist University included a course in preserving, protecting, or defending my individual rights guaranteed by the first ten amendments to the U. S. Constitution, and Article I, the Bill of Rights, to the Texas Constitution, and the common law.

The Ninth Amendment reads: The enumeration in the constitution of certain rights, shal l not be construed to deny or disparage others retained by the people. In addition to the right of privacy, preserved by the Ninth Amendment, the civil right at common law to be read and instructed in my individual rights are fundamental. This right at common law reads: That the Charters (magna Charta and Charta de Foresta) be delivered to every sheriff of England under the King's seal, to be read four times a year before the people in the full county, that is at the county court, that is to wit: The next county court after the Feat of Saint Michael (september 29), and the next county court after Christmas (Decemb er 25), and at the next county court after Easter (March 26), and at the ne xt county court after the Feast of Saint John (December 27). 28 Edward I, Ch. 1, (1300).

These civil and political rights have long been recognized, some 689 years, by the sovereign people at common law since 1300 A. D. when the law was first put in writing in Latin.

I can unequivocally state I was never offered a compulsory or elective course at the University of Texas or Southern Methodist University that specifically provided that I be read and instructed in my individual civi l and political rights, thereby violating my rights under the pneumbra of the Ninth Amendment that is intended to prevent the abuse of discretionary powers of appointed and elected public officials, nor have I waived this right to read and instructed in my fundamental rights either orally or in writing. Neither has the Sheriff of Denton County Texas offered to read or instruct me in my civil or political rights.

SWORN AND SUBSCRIBED TO BEFORE ME, this 3rd day of July 1989.

William Berka

WILLIAM BERKA
Petitioner
1709 Marblehead
Lewisville, Tx 75067

Jami Jo Hardage
Notary Public

NOTARY PUBLIC STATE OF TEXAS

JAMI JO HARDAGE Notary Public
In and for the State of Texas
My Commission Expires 6-22-91

AFFIDAVIT

STATE OF TEXAS

COUNTY OF DENTON

BEFORE ME, THE UNDERSIGNED, a Notary Public, in and for Denton County, Texas on this day personally appeared William Berka, well known to me, and who after by me duly sworn, deposes and says:

I attended public schools at Hearne High School, Hearne, Texas, in Robertson County, and graduated with a diploma from there in 1949.

Neither the compulsory or the elective curriculum included a course that prepared me to be read and instructed in all of my rights, privileges, or immunities, that preserve, protect, and defend my individual life, liberty, privacy, or property from the abuse by appointed or elected government officials of their discretionary powers in accordance with the provisions of the first ten amendments, the Bill of Rights, to the U. S. Constitution, or the Bill of Rights, Article I, of the Texas Constitution, or the common law.

The Ninth Amendment to the U. S. Constitution of the Bill of Rights reads: The enemuration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people. In addition to the right of privacy preserved by the Ninth Amendment, I hereby assert a right to be included in the pneumbra of the Ninth Amendment, the civil right, at common law, to be educated in my individual civil rights that are protected by the first ten amendments to the U. S. Constitution and the first article in the Bill of Rights of the Texas constituti on. This right at common law reads: That the Charters (Magna Charta and Charta de Foresta) (added) be delivered to every sheriff of England under the King's Seal, to be read four time s a year before the people in the full county, that is at the county court, that is to wit: The next county court after Christmas (December 25), and at the next county court after Easter (March 26), and at the next county court after the Feast of Saint Michael (September 29), and

at the next county court after the Feast of Saint John (December 27). 28 Edward I, Ch. 1., (1300).

These civil and political rights have long been recognized, some 689 years, by the sovereign people at common law since 1300 A. D. when the law was first put in writing. (in Latin)

I can unequivocally state that I was never offered a compulsory or elective course at Hearne High School that specifically provided that I be read and instructed in my individual civil and political rights, thereby, violating my rights under the penumbra of the Ninth Amendment that is intended to prevent the abuse of discretionary powers of appointed and elected public officials, nor have I waived this right to be read and instructed in my rights either orally or in writing.

SWORN AND SUBSCRIBED TO BEFORE ME, this 3rd day of July 1989.

William Berka

WILLIAM BERKA
Petitioner
1709 Marblehead
Lewisville, Tx 75067

Tami Jo Hardage
Notary Public

NOTARY PUBLIC STATE OF TEXAS

TAMI JO HARDAGE Notary Public
In and for the State of Texas
My Commission Expires 6-22-91

No. C 8353
IN THE SUPREME COURT OF TEXAS

Edgewood Independent School District, et. al.,
Appellants

v.

William Kirby, et. al.,
Appellees

MOTION TO PERMIT FILING AND OR CONSIDERATION OF ATTACHED AMICUS CURIAE BRIEF TO THE HONORABLE SUPREME COURT OF TEXAS:

COMES NOW, William Berka, a citizen and taxpayer of the State of Texas, files this petition, pro se, and moves the Court to file and or consider the attached Amicus Curiae Brief in support of William Kirby, et. al, Appellees. The grounds for this Motion are fully stated in the opening section of the Brief.

This brief is limited to the issues raised by the Austin Court of Appeals opinion concerning the fundamental right of citizens of Texas to assert their individual rights under the First Amendment , the Ninth Amendment and Fourteenth Amendments to the U. S. Constitution, and Article I, Sections 1, 2, 27, and 29 of the Bill of Rights of the Texas Constitution.

This Motion and Brief are presented in the sincere belief that the authorities citied will be helpful to the Court in deciding the merits of the case at bar.

WHEREFORE, PREMISES CONSIDERED, William prays that the Court will grant this Motion and to consider the accompanying brief.

Respectfully Submitted,
William Berka

William Berka, Pro Se
1709 Marblehead
Lewisville, Tx 75067 214 434 2843

NO. C-8353

C 8353

IN THE SUPREME COURT OF TEXAS

AUSTIN, TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.,

Petitioners

V.

WILLIAM KIRBY, ET AL.,

Respondents

BRIEF OF AMICUS CURIAE IN SUPPORT OF THE PETITIONERS AND PETITIONER-INTERVENORS BY ELEMENTARY AND HIGH SCHOOL STUDENTS FROM KENEDY ISD KENEDY, TEXAS

NO. C-8353

IN THE SUPREME COURT OF TEXAS

AUSTIN, TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.,

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V.

WILLIAM KIRBY, ET AL.,

Respondents

BRIEF OF AMICUS CURIAE IN SUPPORT OF THE PETITIONERS AND PETITIONER-INTERVENORS BY ELEMENTARY AND HIGH SCHOOL STUDENTS FROM KENEDY ISD KENEDY, TEXAS

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IN THE

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AUSTIN, TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.,

Petitioners

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WILLIAM KIRBY, ET AL.,

Respondents

BRIEF OF AMICUS CURIAE IN SUPPORT OF PETITIONERS AND
PETITIONER-INTERVENORS BY
ELEMENTARY AND HIGH SCHOOL STUDENTS FROM
KENEDY ISD
KENEDY, TEXAS

TO THE HONORABLE SUPREME COURT OF TEXAS:

Now come the Elementary and High School Students from Kenedy ISD, Kenedy, Texas and submit the following statements in support of the ruling of the Honorable Harley Clark, Judge - 250th Judicial District, Travis County, in Cause Number 362,516.

The undersigned has been requested to submit these statements to the Court. The undersigned does not represent any party and has no monetary interest in the outcome of the litigation. The statements presented are from individuals who have a substantial interest in preserving the State's

ability to provide equitable public education to its citizens.

Accordingly, the Elementary and High School Students from Kenedy ISD, Kenedy, Texas respectfully pray that this Court consider the attached statements and uphold the decision of the trial court in the case at bar.

Respectfully submitted,
ARNOLD AND NICOLAS
800 One Capitol Square
300 West Fifteenth Street
Austin, Texas 78701
512-320-5200

by Sandra R. Nicolas
Sandra R. Nicolas
State Bar No. 15016500

Clinton Kasprzyk
P. O. Box 1807
Kenedy, Texas 78119

STATEMENT OF AMICUS CURIAE Clinton Kasprzyk

I want you to listen to what I write to you and come to a decision as soon as you can.

I think all schools should be equal in financial support. A richer school has like forty-eight dollars while Kenedy only has two dollars. Now Kenedy should get forty-eight dollars and the rich school two dollars. Then it would be equal. You see Kenedy doesn't have enough money to get the supplies they need. Just like it says "All Men are Created Equal" all schools should be too. The Texas Supreme Court should rule that equal educational opportunity is indeed the law of the land of Texas.

Clinton Kasprzyk
Fifth Grade

I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief on behalf of my child, Clinton Kasprzyk, supporting Petitioners and Petitioner Intervenors in the Edgewood case.

Carolyn Kasprzyk
Parent's Signature

Alice Cortez
706 Overby Road
Kenedy, Texas 78119

STATEMENT OF AMICUS CURIAE Alice Cortez

I'd like for you to hear the case and render the decision as soon as possible. I think we have a right to say what we think. We do not get enough money to buy the materials we need. Eighty-three percent of the schools have more money to buy equipment; then they will get a better education. You know the golden rule where they say "Do to others as you like them do to you." People follow that rule, but not all do. Just please do to us as you like us to do to you.

If we had more money we could get a better education because we would have more equipment. The point is we want the same amount of money the other RICH SCHOOLS get. The Texas Supreme Court should rule that equal educational opportunity is indeed the law of the land of Texas.

Alice Cortez

Alice Cortez
Fifth Grade

I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief on behalf of my child, Alice Cortez, supporting Petitioners and Petitioner Intervenors in the Edgewood case.

Rosie V. Cortez

Parent's Signature

Judy Cuellar
321 School St.
Kenedy, TX 78119

STATEMENT OF AMICUS CURIAE Judy Cuellar

I am writing to urge you to hear the case and render the decision quickly. I think that the Texas Supreme Court should rule that equal educational opportunity is indeed the law of the land of Texas.

We need equality such as more teachers for children to get the attention they need in order to do well in our school such as in other rich schools. Also, money should be divided equally in order to get enough equipment for students and teachers. There is also loss of good teachers because of the low pay in the school district. I am saying for all schools to have the same fair share.

Judy Lisa Cuellar

Judy Cuellar
Fifth Grade

I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief on behalf of my child, Judy Cuellar, supporting Petitioners and Petitioner Intervenors in the Edgewood case.

Mary Cuellar

Parent's Signature

Jason Ramirez
702 Alta Vista
Kenedy, Texas 78119

STATEMENT OF AMICUS CURIAE Jason Ramirez

Hear the case and render the decision as soon as possible. The Texas Supreme Court should rule that equal educational opportunity is indeed the law of the land of Texas.

The way I see it, I thought Texas would be fair about the educational opportunity for other schools to have the chances as other schools. For an example, look at richer schools, they get twice the education as we do here. They have twice the education because the money we get is about ten times lower than other school districts. There are thirty students in our class; compare that to a richer school district. They have about thirteen kids in each room and about thirteen computers. We have about two computers in our class for thirty students.

I just don't think it is fair to have less education because of what's happening now.

Jason Ray Ramirez

Jason Ramirez
Fifth Grade

I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief on behalf of my child, Jason Ramirez, supporting Petitioners and Petitioner Intervenors in the Edgewood case.

Mrs. Delina Ramirez

Parent's Signature

Stacy Rodriguez
P. O. Box 601
Kenedy, Texas 78119

STATEMENT OF AMICUS CURIAE Stacy Rodriguez

We need equality, but first of all the Supreme Court should hear the case and render the decision as soon as possible. It isn't fair that a classroom of ten in a rich school, for example, be given twenty computers while a classroom of thirty in a poor school has two computers. If the percentage of money were given equally there would be enough teachers so that children in all school districts, rich or poor, would have individual need.

We urge the Supreme Court to rule that equal educational opportunity is indeed the law of the land of Texas and financial opportunity as well.

Stacy Elise Rodriguez

Stacy Rodriguez
Fifth Grade

I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief on behalf of my child, Stacy Rodriguez, supporting Petitioners and Petitioner Intervenors in the Edgewood case.

Maggie Rodriguez

Parent's Signature

Dusty Cooper
213 Graham Road
Kenedy, Texas 78119

STATEMENT OF AMICUS CURIAE Dusty Cooper

I believe it is unfair for smaller schools to receive less money per students than larger schools because a child's education no matter where you go to school is the same. As a former student of a 5A school, I know what it is like having every opportunity possible in high school. Now that I am in a 2A school, I wish I had taken more interest in the activities they offered. Just because a school is smaller and has fewer students should not mean fewer opportunities for the students attending. I know many kids who have not reached their fullest potential because the schools only have enough teachers to give the kids a minimal education even though they could learn so many more things and broaden their horizons. Maybe they could even find a hidden talent. For instantce say a student makes straight 100's all year in a 2A school but transfers to a 5A school, he may make 80's or 90's causing him to work harder and eventually teaching him even more than when he was making perfect scores. This is just one example of showing how with more money and better facilities, a student can learn twice as much in the same amount of time.

There are many other ways a school can be improved through adequate funding. Honor classes and an honor's graduation program would give students a chance to earn more credits toward graduation which would help them get into a better college. Many students who are intelligent enough to be in honor classes get put into an average class because of less teachers and end up doing very poor when they become uninterested because the class is taught on a lower level than they can learn. In the end they make perfect grades with little or no effort and school is no longer a challenge.

One last subject I want to talk about is lack of equipment for certain classes. For example, if our science lab had more modern tools, the students would become more interested in the new experiments that could be performed. Another example are the home economics books. It is very difficult and uninteresting to try to learn the best way to live today with a 1970's textbook. Times have changed so much; it is almost useless to even be taught out of these books.

I know that if you pass this law, it will benefit every teacher and student in the state of Texas by giving students and teachers a better opportunity to learn more from each other everyday.

I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief supporting Petitioners and Petitioner Intervenors in the Edgewood case.

Dusty Cooper

Dusty Cooper
Ninth Grade

Jennifer Berry
Rt. 1 Box 122
Kenedy, Texas 78119

STATEMENT OF AMICUS CURIAE Jennifer Berry

In our school at Kenedy High, there are many concerns that must be addressed. Such concerns may include large classes that don't allow individual attention, limited library books and materials, and lack of adequate drop-out prevention programs. These problems could be resolved if we had equal school funding.

When classes are too large to meet the necessary individual student needs, some of the students never get the help that they desperately need. I feel it is very important for students to get as much individual attention as needed to understand the class.

There are limited library books and materials in our school. The main reason we need new and better books is that some of the old books have bad words and drawings written in them and are also worn from use. If we got new materials such as new books, students would not be as tempted to write in the books.

The final subject I want to discuss is about the lack of adequate drop-out prevention programs. Drop-out programs are greatly in need because many students quit school every year. When students do this, they don't get the high school education that they need in order to be successful in life. If we could encourage students not to drop-out, they could get an education and get the most out of life.

These are only a few of the problems that need to be listened to and they are: to give students the individual help they need in big classes; supplement the limited library books and materials that we need in our school; and more encouragement on the drop-out prevention programs. After all, today's students are tomorrow's leaders and we should give them as much as we possibly can to help them be successful in the future.

I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief supporting Petitioners and Petitioner Intervenors in the Edgewood case.

Jennifer Berry

Jennifer Berry
Ninth Grade

Ricky Puente
301 Graham Road
Kenedy, Texas 78119

STATEMENT OF AMICUS CURIAE Ricky Puente

Will Kenedy schools get equal funding? Right now Kenedy ranks 17 on a scale of 100. My three reasons for needing equal funding are as follows: There is a lack of modern up-to-date materials like computers, science labs, etc. Second, there is no money for programs and services. Third of all, the classes here are too large to pay attention to an individual student's needs.

My first reason is that we lack modern up-to-date materials like computers and science labs. If we had computers, we could have computer classes. And if we had science labs, we could do experiments and also learn more about science. It is clear to see why we need more money for this equipment.

Second, there is no money for programs and services. If we had more money we could improve the campus by getting a new track, new buses, and new carpet. We could even build more classrooms so it wouldn't be so crowded. We need more money.

My third reason is that all the classes are too large to pay attention to an individual student's needs. Some students are slower than others and if the class is too large, the teacher can't go to every student and help. The teacher has to teach all the students equally and with thirty or more students to a class that is pretty hard.

In the previous paragraphs, I have stated my three reasons why we need equal funding. There is lack of modern up-to-date materials; there is no money for programs and services; and finally, the classes are too large to pay attention to an individual student's needs. So will we get equal funding in the future? We'll have to wait and see.

I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief supporting Petitioners and Petitioner Intervenors in the Edgewood case.

Ricky Puente

Ricky Puente
Ninth Grade

STATEMENT OF AMICUS CURIAE Debra Monsivais

Are our rural students being deprived of the same education opportunities that are being offered to urban students? This is the reason we are asking the Supreme Court Justice to treat all schools fairly. I think all schools should get the same amount of money. Therefore, I am taking a stand on this problem.

The first reason I am taking a stand on this problem is the lack of modern and up-to-date materials. Our school's books are very old and out-of-date. The library needs new equipment. Some school's libraries have computers, and we can't afford that because of the lack of money. The most important one of all is that we need a greater variety of subjects.

The second reason I am taking a stand on this problem is because of the facilities and limited funds for repair and maintenance. We do not have enough money to repair leaky faucets and fountains. We are low on being able to repair classroom furnishings. We also need more money to be able to beautify our school to boost school spirit.

The third reason I am taking a stand on this problem is that classes are too large to permit attention to individual student's needs. Our English class, for instance, is too large; therefore, if one or more people talk it is hard to listen to the teacher. In addition we need bigger classrooms to provide more space for each individual student. Furthermore, because of the fact that we don't get enough money, we can't get enough teachers to specialize in a single subject.

All the reasons mentioned above are the reasons I am taking a stand to try and get more money for our districts. There is lack of modern and up-to-date materials, problems with facilities and limited funds for repairs and maintenance, and too many large classes. After reviewing these facts, I'm sure you will agree to send our school more money so that our students may receive an education equal to that of their urban counterparts.

I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief supporting Petitioners and Petitioner Intervenors in the Edgewood case.

Debra Monsivais

Debra Monsivais
Ninth Grade

STATEMENT OF AMICUS CURIAE Sara Gonzales

I am a student from Kenedy High School. Looking over some statistics and figures, I have come up with some important information. I have found that we are not getting enough school funding. We need to receive more. If we had your help, we could really make this school an even better place. By receiving more, we can make some changes. We could divide some classes up, competition with schools could be on equal terms, and special programs could be formed.

Allow me to go back and elaborate on each of these reasons. My first reason is dividing some classes. Some classes have a lot of students. Several students feel neglected or left out. To solve this problem, we could build more rooms and hire more teachers. This could result in more attention and participation in class. More students could understand and pass the subject.

Competition with schools is my second reason. Students cannot compete on equal terms with students whose schools have better training. They can afford better quality resources. They have what they need for their athletes. We need better weights, a better track, and other kinds of resources. Our athletes cannot improve as much without them. Therefore, we need the money. It is not fair for a school like ours to compete in any kind of extracurricular activity with a school who has more advantages. With this money, we can fulfill many of our athlete's dreams.

My third reason are drop-outs. If we had more money, we could form drop-out prevention programs. We can have counselors talk to students about school. For example, if a student had any doubts about staying in school, he/she could go to one these programs. This specially trained person could convince him/her to stay in school. They do not realize how important staying in school is. I think this program could really do it. Many minds could be changed.

Large classes, competition with schools, and prevention programs are only three of the reasons we need more school funding. Lack of attention, drop-outs, and unequal terms are things that need to be changed. With a little help from the funding it can be done. After reading my letter, I hope you understand how important it is to me and other students to have more school funding. It would really be appreciated.

I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief supporting Petitioners and Petitioner Intervenors in the Edgewood case.

Sara A. Gonzales
Sara A. Gonzales
Ninth Grade

STATEMENT OF AMICUS CURIAE Sylvia Gonzales

Teachers, parents, and students are worried about the lack of money here at the Kenedy schools. Not enough classrooms, no room for special activities, and further delays which will do irreparable damages are my three reasons why money should be funded equally to rich and poor school districts.

My first reason is there are not enought classrooms. One of our classes has more than thirty students because there are not enough classrooms to divide these classes into smaller ones.

My second reason is special activites. When kids need uniforms, there isn't enough money to buy them. So they play in the uniforms they used eight years ago.

My third reason is further delays will do irreparable damages. If a tornado or something worse were to happen to the school, we would not have any money. We need money to back us up.

Those are my three reasons. It would help a lot if you took that into consideration. Many teachers, students, and parents would appreciate it, especially me.

I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief supporting Petitioners and Petitioner Intervenors in the Edgewood case.

Sylvia Gonzales

Sylvia Gonzales
Ninth Grade

Gabriel Garza
413 Karnes St.
Kenedy, Texas 78119

STATEMENT OF AMICUS CURIAE Gabriel Garza

The subject that I am bringing up is that of fair school funding in our school. There are many schools that get a lot of money per student, but we get less money which is very unfair. All schools should be equal. Here are some reasons why: lack of modern, up-to-date materials and equipment; problems with facilities, and large classes.

The first reason is the lack of modern, up-to-date material and equipment. Our science lab is a big deal. We have to use old test tubes and very small work spaces. Another thing are computers. Computers are a very important need in this school. We need up-to-date computers to make things go better then a cheap computer, and also to get computers for each class like bigger schools. Third of all are school books. We need up-to-date books to learn more of what changes have occurred. For example, if we have an old history book and it only went to Mr. Nixon of the presidents, we wouldn't know much of our presidents after Nixon. These are things that need to be kept up-to-date.

The second reason is the problem with our facilities. One thing is limited funds for repairs and maintenance. We have walls that are falling apart and our floor tiles don't match each other. A second thing is there is no room for special activities. For example, if we were going to have a U. I. L. meet in our school, we would not have room for the students to compete in because the rooms are real small. Third of all the unattractive campuses are a poor thing for student's pride. One of the things that doesn't make it attractive are our old fashioned materials. When people come to our football games it is very unattractive to see a good game played on a bad field due to lack of money to fix it with. We have a dirt track to run on instead of a nice track to run on. These are some of the problems with our facilities.

The final thing is that the classes are too large to permit attention to individual student's needs. By making more rooms for more classes, it will make things easier for students to learn more. The teacher would have more time to talk to the students to help them understand. It would really reduce the number of failing classes. With this, there will be more time for the teacher to go to students to help him/her with a problem he/she has.

These are reasons why there should be fair school funding. It will help to have better up-do-date materials, reduce problems with the facilities, and have smaller classes to make a school a nicer and a better place to be.

I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief supporting Petitioners and Petitioner Intervenors in the Edgewood case.

Gabriel Garza

Gabriel Garza
Ninth Grade

STATEMENT OF AMICUS CURIAE Roel Rodriguez

How do you feel about schools receiving the same amount of money? Schools should receive the same amount as others for many reasons such as: the classes are too large, there is no money for innovative programs and services, and loss of good teachers to high-paying school districts.

First of all, there are so many students in a class that all of them don't get the help they need. Teachers have trouble teaching and controlling the class since there are so many students. With more money, we could afford to get more classes with less students which would enable us to get a better education.

Second, all schools have good equipment and things that brightened up their schools. With more money we could fix things up such as putting the same kind of tile on the floor instead of patches of every color. So with your help we can make our school a better place.

Third, having more money can help us afford to get better teachers rather than losing them to better and bigger schools. With more teachers we can have more classes and we can have more teachers so the ones who need help can go to a certain class. So take my advice and trust me - give our school more money.

I have listed three reasons why all schools should receive the same amount of money. Act now and help us to better our school, to receive a better education, and to afford teachers who know and can teach more. We will appreciate the help you give to help us.

I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief supporting Petitioners and Petitioner Intervenors in the Edgewood case.

Roel Rodriguez

Roel Rodriguez
Ninth Grade